

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, ~~1913~~ 1914

No. ~~1000~~ 77

JOHN T. HENDRICK, PLAINTIFF IN ERROR,

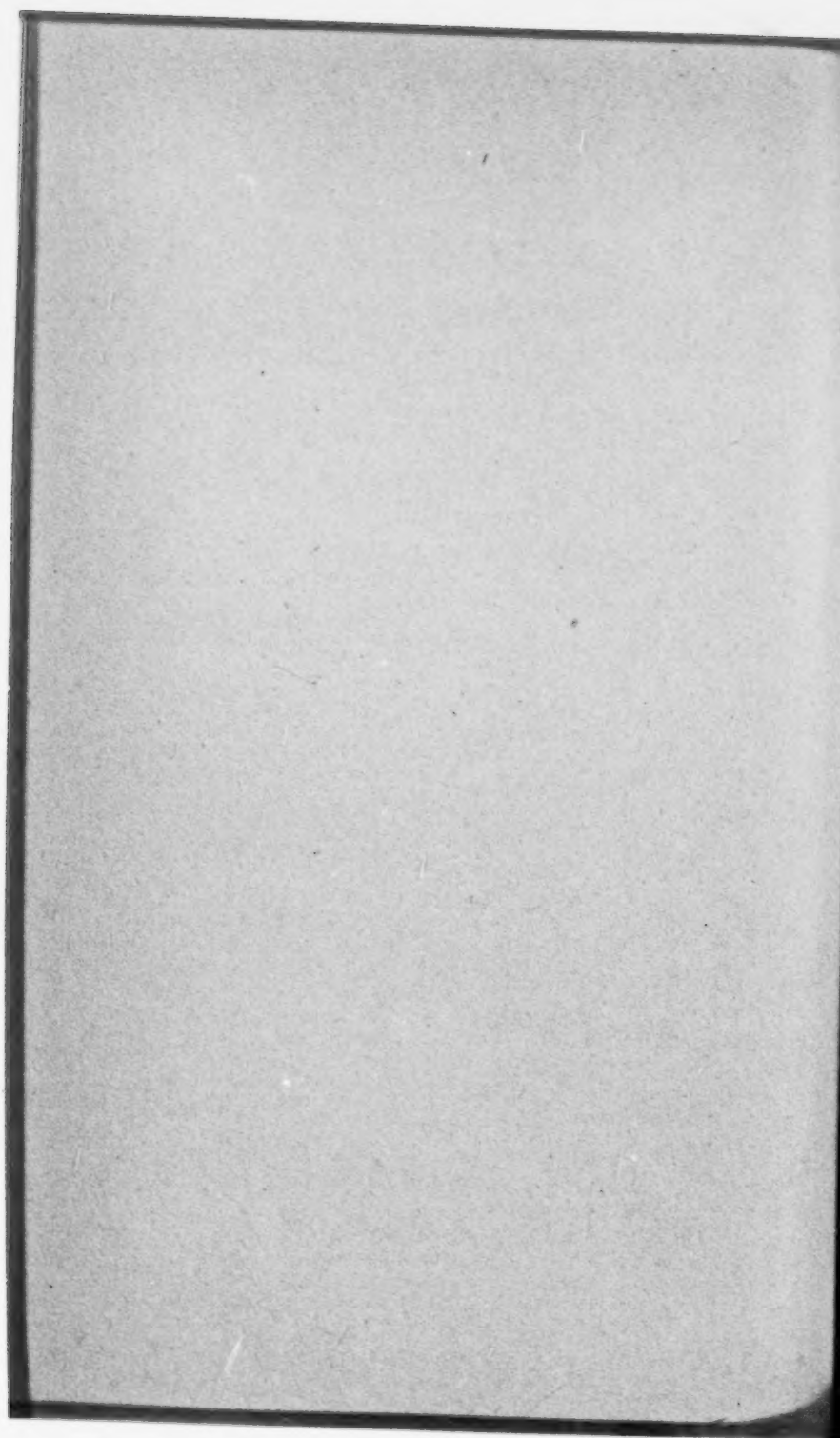
vs.

THE STATE OF MARYLAND.

IN ERROR TO THE CIRCUIT COURT OF PRINCE GEORGE COUNTY,
STATE OF MARYLAND.

FILED DECEMBER 16, 1912.

(23,461)



(23,461)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1913.

No. 399.

JOHN T. HENDRICK, PLAINTIFF IN ERROR,

vs.

THE STATE OF MARYLAND.

IN ERROR TO THE CIRCUIT COURT OF PRINCE GEORGE COUNTY,
STATE OF MARYLAND.

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1 In the Circuit Court for Prince George's County, Maryland.
Criminal Appeals, No. 27, to the October Term, 1910.

JOHN T. HENDRICK
vs.
THE STATE OF MARYLAND.

State Warrant.

STATE OF MARYLAND.

Prince George's County, To wit:

To Chas. W. Barr, Constable, Greeting:

Whereas, complaint has been made before me, the subscriber, one of the justices of the peace of the State of Maryland in and for the said county, upon the information and oath of Chas. W. Barr, who charges John T. Hendrick, a resident of the District of Columbia, with having, on the 27th day of July, 1910, at Hyattsville, Md., wilfully and unlawfully operated and caused to be operated on the highways of the State, to wit the Baltimore and Washington pike, a highway in said county, a motor vehicle, to wit an automobile, without having procured from the Commissioner of Motor Vehicles the certificate of registration for said motor vehicle required by Section 133 of said Law.

You are therefore hereby commanded to immediately apprehend the said John T. Hendrick, and bring him before me, the subscriber, or some other justice of the peace of said state and county, to be dealt with according to law. Hereof fail not, and have you then and there this warrant.

Given under my hand and seal this 27th day of July, 1910.

W. BROOKE HUNTER, [SEAL.]
Justice of the Peace.

Served.

CHARLES W. BARR.

2 Docket II, Case 7.

STATE OF MARYLAND.
vs.
JOHN T. HENDRICK.

Counsel for Defendant: Ralston, Siddons & Richardson and C. L. Bouvé.

Information of Chas. W. Barr, who charges defendant, a resident of the District of Columbia, with having on the 27th day of July, 1910, at Hyattsville, Maryland, wilfully and unlawfully operated on the highways of the state, to wit the Baltimore and Washington

pike, a highway in said county, a motor vehicle, to wit an automobile, without having procured from the Commissioner of Motor Vehicles the license to operate the same as required by Section 137 of the Motor Vehicle Law of Maryland, and without being accompanied by a licensed operator as further required by said section.

Warrant issued July 27, 1910, directed to Chas W. Barr, Constable, returnable immediately.

Warrant returned served July 27, 1910.

Jury trial waived, but not the right of appeal.

Defendant plead not guilty to the charge.

The defendant, by his attorneys, Ralston, Siddons & Richardson and C. L. Bouvé filed a motion to quash the information and warrant sworn out against him for causes as follows:

First. That Section one hundred and thirty-seven of the Maryland Motor Vehicle Law, for alleged violation of which the information has been filed and the warrant has been issued in this case, is contrary to the Constitution of the United States in that it
3 constitutes an unlawful and unauthorized attempt to regulate commerce between the States and impose a direct burden on such commerce and intercourse between citizens of the United States.

Second. That said Section is further unconstitutional and void in that it obstructs, impedes and prohibits the exercise of the right conferred on citizens of the United States by the Constitution to free ingress *upon* — passage through and egress from the States of the Union, in general, and the State of Maryland in particular, and to passage to and from the National Capital.

Third. That said Section is further void and unconstitutional in that in connection with Section one hundred and thirty two and Section one hundred and forty A of said law, it constitutes an unlawful discrimination against the residents of the District of Columbia in favor of the residents of the States of the Union, in that it prohibits the use of the highways of Maryland to the said residents of the District of Columbia for motoring purposes for any period *wahltssoever* during the year without first paying a registration and license fee provided in said act; whereas the payment of said registration and license fee is not required by said act from the residents of the states of the Union for two periods of seven consecutive days in each calendar year.

Fourth. That said law under which said information was sworn and warrant issued is not a proper use of the police power of the state, that the amount exacted from the automobile owner has no relation to the necessary expense of identification and control.

Fifth. That the law under which said information was sworn to and warrant issued is not a proper exercise of the revenue powers of the State of Maryland, in that

(a) The amounts paid under it are collected from non-
4 citizens of the State of Maryland, against whom the state possesses no power of taxation; and in that

(b) — is not levied according to the actual worth in real or personal property of the citizen required to pay the same.

Sixth. That the law under which said information was sworn

to and warrant issued was illegal and unconstitutional, in that if a charge for the use of the roads of the state was contemplated by said act, it is not based upon the value of such use to the person to whom it is given, as the detriment to the road arising from such use; but is unequal, unfair, and class legislation, granting such use according to differing scales of payment, and not insuring to the citizens of the United States equal protection of the laws; contrary to the provisions of the Constitution of the United States.

(Signed)

RALSTON, SIDMONS & RICHARDSON,
C. L. BOUVÉ,

Defendant's Attorneys.

Motion overruled. Case tried. Defendant fined \$25.00 and \$2.00 costs. Appeal noted.

August 6, 1910. Certified statement of case transmitted to Commissioner of Motor Vehicles.

August 25, 1910. Defendant entered into a recognizance for the sum of \$500.00 with Wm. E. Richardson as surety for his appearance before the circuit court for the October term, 1910.

September 19, 1910. All papers pertaining to the case transmitted to the Clerk of the Circuit Court for Prince George's County, Maryland, for the October term of the Circuit Court, 1910.

5 Witness my hand and seal this 19th day of September, 1910.

W. BROOKE HUNTER, [SEAL.]
Justice of the Peace in and for
Prince George's County, Md.

True copy from my docket.

Attest:

W. BROOKE HUNTER, [SEAL.]
Justice of the Peace.

Filed Sept. 20, 1910.

6 In the Circuit Court for Prince George's County, Maryland.

Number 27, Criminal Appeals.

STATE OF MARYLAND

vs.

JOHN T. HENDRICK.

Agreed Statement of Facts.

Appeal from Justice of the Peace.

It is stipulated that the said cause may be submitted at this term of said Court for trial by the Court, upon the following agreed statement of facts, stipulated and agreed by and between M. Hampton Magruder, State's Attorney for the State of Maryland, and John T.

Hendrick, by his attorneys, C. L. Bouvé, and Ralston, Siddons & Richardson:

1. This is a cause originally brought before W. Brooke Hunter, a justice of the Peace for Prince George's County, State of Maryland, on the 27th day of July, 1910, by the State of Maryland against John T. Hendrick, for the violation of Section 133 of the Motor Vehicle Law of Maryland, effective on July 1, 1910.

2. It is agreed that the said John T. Hendrick is and was, on the 27th day of July, 1910, a citizen of the United States and a resident of the City of Washington in the District of Columbia, and physically resident and commorant in the said District of Columbia.

3. That said John T. Hendrick is and was, on the 27th day of July, 1910, the owner and operator of a motor vehicle, to wit, an automobile.

7 4. That on the 27th day of July, 1910, said John T. Hendrick left his office in the City of Washington in the automobile aforesaid, and conducted and operated the same from the City of Washington, in the District of Columbia, into Prince George's County, in the State of Maryland; and while temporarily operating and conducting the same as aforesaid, was arrested on the Baltimore and Washington turnpike, within the limits of the town of Hyattsville, in said county in said state, on the charge of operating his said automobile on the highways of the State of Maryland without having procured the certificate of registration required by Section 133 of the Motor Vehicle Law of said State.

5. That said John T. Hendrick was, then and there, brought before the Justice of the Peace of said county, and fined in the sum of \$15.00 for the violation of said Section 133, after having been found guilty of the charge set out in a warrant duly issued by said Justice, a motion to quash said warrant having been denied by said Justice; whereupon the said John T. Hendrick filed his appeal to this Court.

6. That the said John T. Hendrick had not, at the time and place aforesaid procured the certificate of registration for his automobile required by Section 133 of said Motor Vehicle Law.

The said parties further stipulate and agree, that upon the foregoing and agreed cause, the Court shall determine the questions and differences between them in this cause, and shall render judgment thereon according as the rights of said parties in law may appear, in the same manner as if the facts aforesaid were proven upon the trial. Either party is to have leave to appeal from the judgment of the Court.

M. HAMPTON MAGRUDER,
State's Attorney.

By C. L. BOUVÉ,
RALSTON, SIDDONS &
RICHARDSON,
Attorneys for Defendant.

Filed October 28, 1910.

9 In the Circuit Court for Prince George's County, Maryland.

Number 27, Criminal Appeals, to the October Term, 1910.

JOHN T. HENDRICK

vs.

THE STATE OF MARYLAND.

Petition for Writ of Error.

Comes now John T. Hendrick, plaintiff in error in this cause, and says that on the 20th day of December, 1910, the Honorable Fillmore Beall, Associate Judge of this Court, entered judgment and sentence against the plaintiff in error, in rendering which judgment or sentence certain errors were committed, to the prejudice of the plaintiff, as will in more detail appear hereafter.

That on the 27th day of July, 1910, one John T. Hendrick, then and there a citizen of the United States and a resident of the District of Columbia and the owner and operator of a motor vehicle, to wit, an automobile, left his office in the City of Washington in the automobile aforesaid, and conducted and operated the same from the City of Washington in the District of Columbia into Prince George's County, in the State of Maryland; and that while temporarily operating and conducting the same as aforesaid was arrested on the Baltimore and Washington turnpike within the limits of the town of Hyattsville in said county in said State on the charge of operating his said automobile on the highways of the State of Maryland without having procured the certificate of registration for such automobile required by section 133 of Motor Vehicle

10 Law of July 1, 1910, of said State.

That the Plaintiff in Error, John T. Hendrick, was then and there brought before a Justice of the Peace of said County and fined in the sum of \$15.00 for the violation of section 133 of said law after having been found guilty of the charge set out in a warrant duly issued by said Justice; a motion to quash said warrant having been denied by the Justice, whereupon the Plaintiff in Error filed his appeal to this Court.

It was alleged in said Motion to quash that the Maryland Motor Vehicle Law of July 1, 1910, under which the Plaintiff in Error was arrested and fined was a violation of the constitution of the United States in that it constituted an unlawful attempt on the part of the State to regulate interstate commerce, that it interfered with and obstructed the constitutional right of the Plaintiff in Error to entry into and passage through and egress from the various states of the Union, that it discriminated unlawfully against the Plaintiff in Error as a resident of the District of Columbia and in favor of citizens of states of the Union, and that it was unequal, unfair and class legislation and did not insure to the citizens of the United States the equal protection of the laws.

That after said motion to quash was overruled by the said Justice

of the Peace, and the Plaintiff in Error fined in the sum of \$15.00 as aforesaid by said Justice the Plaintiff in Error duly appealed in accordance with the provisions of section — of said Motor Vehicle Law to this Court. The record was transferred to the Criminal Appeals and docketed by this Court and was set for trial at the Fall Term of said Court on which occasion the Plaintiff in Error by his counsel agreed with the State's Attorney for the State of Maryland to submit the case to the judge sitting in that court on an agreed statement of facts which is of record in this court.

That on the 20th day of December, 1910, the Honorable Fillmore Beall being the judge before whom the case was presented and tried on the agreed statement of facts before mentioned affirmed the sentence of the said Justice of the Peace. No opinion was handed down.

That under the Motor Vehicle Law of Maryland no appeal from the decision of this Court from judgments rendered by it on appeal to it from Justices of the Peace is provided, and under both the laws and practice of the State of Maryland the decision rendered in this case is final and conclusive and is the decision of the highest Court in which an appeal or writ of error would lie in this case.

Wherefore the Plaintiff in Error prays the allowance of a writ of error directed to this court as the highest court of the State in which a decision in this cause could have been had, returnable to the Supreme Court of the United States at Washington, D. C., for the correction of the *arrest* complained of which are set out in the form of assignment of errors filed with this petition and that the transcript of the record and all proceedings and papers in this cause duly authenticated may be sent to the Supreme Court of the United States.

RALSTON, SIDDONS & RICHARDSON,
CLEMENT L. BOUVÉ,

Attorneys for Plaintiff in Error.

12 In the Circuit Court of Prince Georges County, Md.

Number 27, Criminal Appeals, to the Oct. Term, 1910.

JOHN T. HENDRICK

VS.

STATE OF MARYLAND.

Assignment of Errors.

The Plaintiff in Error in this case in connection with a Petition for the issuance of the writ of error assign- as grounds of error occurring by reason of the affirming sentence rendered by the Circuit Court of Prince Georges County in this case the following:

(1) That the Court erred in affirming the sentence imposed upon the Plaintiff in Error by the Justice of the Peace for Prince Georges County, under section 1400 of said Act, whereby the Plaintiff in Error was fined in the sum of \$15.00 for temporarily operating his

motor vehicle within the limits of the State of Maryland without having procured the registration thereof in accordance with the provisions of section 133 of the Motor Vehicle Law of Maryland, in that in so far as that section operates upon the automobiles and motor vehicles of non-residents passing from or returning to the District of Columbia by way of Maryland, it prohibits intercourse between the State of Maryland, and the District of Columbia by the citizens thereof in the exercise of such intercourse by means of the ordinary vehicles of transportation and travel, except on the payment of a certain amount of money to the State of Maryland in return for the privilege of exercising such act of interstate intercourse in said State, all of which constitutes an attempt on the part of the State of Maryland to regulate commerce, traffic and intercourse between the States of the Union contrary to the 8th Section of Article 1 of the Constitution of the United States.

(2) That the Court erred in affirming the said sentence of the Justice of the Peace and thereby sustaining the validity of said section 133 of the Motor Vehicle Law of Maryland in connection with section 1400 thereof in its application to the Plaintiff in Error because said section is unconstitutional and void in that it obstructs, impedes and prohibits the exercise of the right conferred on citizens of the United States by the Constitution of the United States to free ingress into, passage through and egress from the States of the Union in general and the State of Maryland in particular, and to passage to and from the National Capital without taxation or burden imposed by the State for the exercise of said right of passage.

(3) That the Court erred in affirming the said decision of the Justice of the Peace thereby sustaining the validity of section 133 of said Act in that said section, in connection with sections 132 and 140 A, and 1400 of said Maryland Motor Vehicle Law, constitute an unlawful discrimination against the residents of the District of Columbia and in favor of the residents of the States of the Union, in that they prohibit the use of the highways of Maryland to the said residents of the District of Columbia for motoring purposes for any period whatsoever during the year, without first paying the registration fee provided in said Act, whereas the payment of said registration fee is not required by the said Act from the residents of the States of the Union for two periods of 7 consecutive days in the calendar year, contrary to the Constitution of the United States.

(4) That the Court erred in affirming the said sentence of the Justice of the Peace thereby upholding the validity of section 133, in connection with section 1400 of said law, because said section is violative of the 14th Amendment of the Constitution of the United States in that its effect is to deprive the Plaintiff in Error of his property without due process of law, since the amount exacted from the Plaintiff in Error has no relation to the necessary expense of identification or control and is therefore arbitrary and does not constitute a proper exercise of the police power of the State.

(5) That the Court erred in affirming the sentence of the Justice of the Peace thereby sustaining the validity of section 133 in con-

nection with Section 1400 of said Act in that the effect and purpose of said sections when applied to non-residents of the State of Maryland is to collect and force the payment of a revenue for the State under the guise of a police regulation from such non-residents and thus operates to deprive them of their property without due process of law contrary to the Constitution of the United States.

(6) That the Court erred in affirming said sentence of the Justice of the Peace and thereby sustaining the validity of section 133 in connection with section 1400 in that if a charge for the use of the roads of the State was contemplated by said Act it is not based upon the value of such use to the person to whom it is given or the detriment to the roads arising from such use, but is unequal, unfair and class legislation granting such use according to differing scales of payment and not insuring to the citizens of the United States equal protection of the laws contrary to the provisions of the Constitution of the United States.

(7) That the Court erred in affirming said sentence of the Justice of the Peace and thereby sustaining the validity of said section 133 in connection with section 1400 thereof, because even if said section constitutes a bona fide attempt on the part of the State of Maryland to exercise its police power, and not an attempt to collect revenue for the State under the guise of a police regulation, it is, even if valid against the citizens and residents of the State of Maryland, invalid as against the citizens of other States or the District or the District of Columbia, when passing through the State of Maryland in ordinary vehicles of transportation, as jurisdiction to legislate concerning such acts of intercourse lies wholly and exclusively with the Congress of the United States, and beyond the police power of the State of Maryland.

(8) That the Court erred in affirming said sentence of the Justice of the Peace, whereby the Plaintiff in Error was forced to pay a fine of \$15.00 for the violation of section 133, in connection with section 1400 of said act in that, the section being void in its application to the Plaintiff in Error and violative of the Constitution of the United States, the fine purposed on the Plaintiff in Error for the alleged violation thereof was a deprivation of the property of the Plaintiff in Error, without due process of law.

RALSTON, SIDMONS & RICHARDSON,
CLEMENT L. BOUVÉ,

Attorneys for Plaintiff in Error.

16 In the Circuit Court of Prince George's County, Maryland.

Number 27, Criminal Appeals, to the October Term, 1910.

JOHN T. HENDRICK
vs.
STATE OF MARYLAND.

Order.

Upon consideration of the attached petition for writ of error in the above entitled cause, and of the assignments of error hereto attached, it is this 20th day of December, A. D. 1911,

Ordered That the writ of error prayed for be allowed.

FILMORE BEALL,
*Judge of the Circuit Court of the 7th Judicial
Circuit of the State of Maryland.*

17 In the Circuit Court of Prince George's County, Maryland.

No. 27, Criminal Appeals, to the October Term, 1910.

JOHN T. HENDRICK, Plaintiff in Error,
vs.
STATE OF MARYLAND, Defendant in Error.

Motion.

Now comes the plaintiff in error, John T. Hendrick by Ralston, Siddons and Richardson and Clement L. Bouve his attorneys, and moves this honorable court to correct the record in the above entitled case in the following particulars:

(a) Strike out the writ of error issued December 20, 1911.

(b) Strike out the citation issued December 20, 1911.

And for cause for said motion shows as follows:

1. That the clerk of this court had no power or authority to issue the writ of error, but the same could only be issued by the clerk of the Federal court for the district of Maryland.

2. The citation referred to above, and heretofore issued by the clerk of this court, being issued under a void writ of error, is equally void.

Respectfully submitted,

RALSTON, SIDDONS & RICHARDSON,
CLEMENT L. BOUVÉ,

For the Plaintiff in Error.

18 In the Circuit Court of Prince George's County, Maryland.
No. 27, Criminal Appeals, to the October Term, 1910.

JOHN T. HENDRICK, Plaintiff in Error,
vs.
STATE OF MARYLAND, Defendant in Error.

Order.

Upon consideration of the motion of the plaintiff in error John T. Hendrick in the above entitled case to correct the record of the proceedings therein it is by this Court this thirteenth day of December A. D. 1912,

Ordered That said record be corrected in the following particulars:

- (a) Strike out the writ of error issued December 20th, 1911.
- (b) Strike out the citation issued December 20th, 1911.

FILMORE BEALL,
*Judge of the Circuit Court for said Prince
George's County, Maryland.*

19 UNITED STATES OF AMERICA, ss:

The President of the United States to the Honorable the Judges of the Circuit Court of Prince George's County in the Seventh Judicial Circuit of the State of Maryland, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Circuit Court of Prince George's County, Maryland, before you, or some of you, between John T. Hendrick and the State of Maryland, a manifest error hath happened, to the great damage of the said John T. Hendrick, as by his complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within 30 days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

Witness the Honorable Edward D. White, Chief Justice of the United States, the 11th day of December, in the year of our Lord one thousand nine hundred and twelve.

[Seal United States District Court, Maryland.]

ARTHUR L. SPAMER,
*Clerk of the District Court of the United
States for the District of Maryland.*

Allowed by—

FILLMORE BEALL,

Judge of the Circuit Court for

Prince George's County, Md.

[Endorsed:] This Original Writ of Error to be sent to Cl'k Supreme Court U. S. Original.

20 UNITED STATES OF AMERICA, ss:

To the State of Maryland. Defendant in Error, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to a writ of error, filed in the Clerk's Office of the Circuit Court of Prince George's County in the seventh Judicial Circuit of the State of Maryland, wherein John T. Hendrick is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Fillmore Beall, Associate Judge of the Circuit Court of Prince George's County in the seventh Judicial Circuit of the State of Maryland, this 13th day of December, in the year of our Lord one thousand nine hundred and twelve.

FILLMORE BEALL,

Judge of the Circuit Court for said

Prince George's County, Maryland.

Service Accepted:

CLARENCE M. ROBERTS,

State's Attorney for Prince

George's County, Maryland.

21 In the Circuit Court for Prince George's County, Maryland.

Criminal Appeals, No. 27, to October Term, 1910.

STATE OF MARYLAND

VS

JOHN T. KENDRICK.

1910, Sept. 20.—Appeal J. P. Jdgt. transcript of record & Recogn. bond fd. No. 46.

1910, Octo. 28.—To be submitted on agreed statement of facts & Brief on the 4th and 11th.

1910, Octo. 28.—Appellant's brief filed, applicable to Nos. 26 & 27. Agreed statement of facts filed. Receipt of W. B. Hunter, J. P., for his costs \$4.00 filed, and letter of Ralston & Siddons filed.

1910, Dec'r 1.—\$40.00 deposited to cover fines imposed by the J. P. Nos. 26 & 27, and the same deposited by the Clerk in the First National Bank of Southern Maryland.

1910, Dec'r 20.—Judgment affirmed with costs.

1911, Jan'y 28.—Transcript of record sent to Court of Appeals.

1911, Dec'r 20.—Petition for writ of error. Assignment of error. Order granting writ of error and citation in error filed.

1912, Dec. 13.—Motion to strike out original writ of error and citation issued thereon filed. Order of Court granting the same.

1912, Dec. 11.—Writ of error issued by Clerk of the District Court of the United States for the District of Maryland.

1912, Dec. 13.—Citation issued & service acknowledged.

22

THE UNITED STATES OF AMERICA,

State of Maryland, Prince George's County:

In pursuance of the command of the writ of Error within.—I, Richard N. Ryon, Clerk of the Circuit Court of the seventh Judicial Circuit of the State of Maryland, for Prince George's County, herewith transmit a true copy of the record, the Assignments of Error, and all of the proceedings in the case of the State of Maryland vs. John T. Hendrick, lately pending in the said Circuit Court for Prince George's County, Maryland, under my hand and the seal of the said Court.

Witness my official signature and the seal of the said Circuit Court at Upper Marlboro, Prince George's County, Maryland, this 13th day of December, in the year of our Lord one thousand nine hundred and twelve.

[Seal Circuit Court for Prince George's County, Maryland.]

RICHARD N. RYON,

*Clerk of the Circuit Court for Prince
George's County, Maryland.*

23

STATE OF MARYLAND,

Prince George's County, To wit:

I hereby certify that the foregoing is a true copy of the Minutes of the Proceedings in the above entitled cause, in the Circuit Court for Prince George's County.

In testimony whereof, I hereto set my hand and affix the seal of the Circuit Court for the aforesaid County, this 13th day of December, 1912.

[Seal Circuit Court for Prince George's County, Maryland.]

RICHARD N. RYON, *Clerk.*

Endorsed on cover: File No. 23,461. Maryland, Prince George County Circuit Court. Term No. 399. John T. Hendrick, plaintiff in error, vs. The State of Maryland. Filed December 16th, 1912. File No. 23,461.

OFFICE SUPREME COURT, U. S.
FILED
NOV 8 1913
JAMES D. MAHER
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1913.

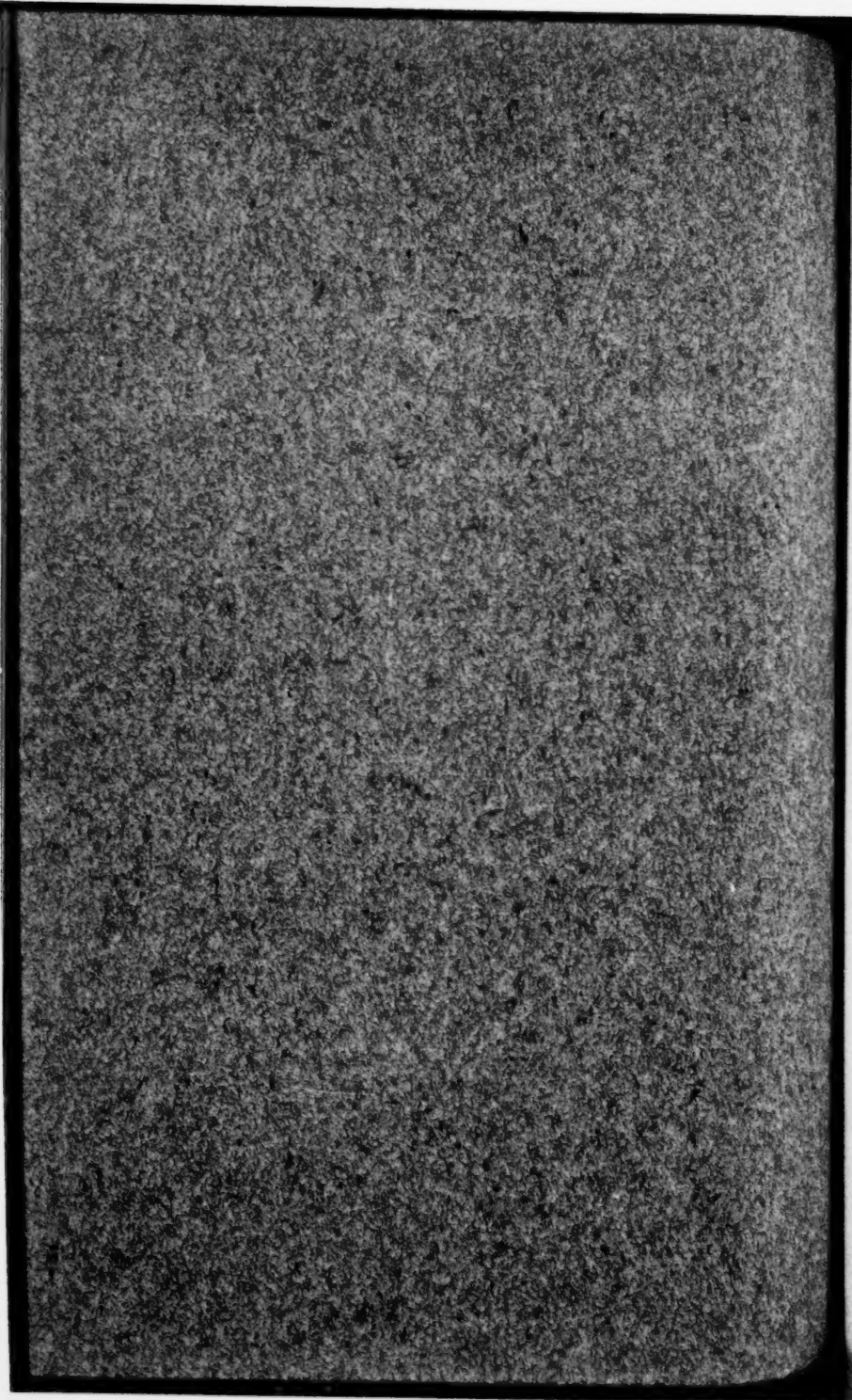
No. **77**

J. T. HENDRICK

STATE OF MARYLAND.

MOTION FOR ADVANCEMENT FOR HEARING.

CLEMENT L. BOUVE,
J. H. RALSTON,
W. E. RICHARDSON,
Attorneys for Petitioner.



SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1913.

No. 399.

J. T. HENDRICK

vs.

STATE OF MARYLAND.

MOTION FOR ADVANCEMENT FOR HEARING.

Now comes the petitioner, John T. Hendrick, plaintiff in error, and respectfully moves the court to advance this cause upon the docket and hear it at as early a date as the convenience of the court will permit, and for reasons therefore he states:

(1) That on the 27th day of July, 1910, the plaintiff in error, John T. Hendrick, a citizen of the United States and a resident of the District of Columbia, and the owner and operator of a motor vehicle, to wit, an automobile, drove and operated his automobile from his office in the city of Washington, D. C., to the town of Hyattsville, Prince George County, Maryland; that while he was driving and operating his automobile as aforesaid he was arrested by the authorities of said town of Hyattsville on the charge of operating his motor vehicle on the highways of the State without hav-

ing procured the certificate of registration required by section 133 of the motor vehicle law of the State of Maryland and without having procured the license to operate the same as required by section 137 of said law. He was brought before the justice of the peace of Prince George County, Md., who imposed a fine in the case of each violation charged, after having found the defendant guilty of the charges set out in the warrants. The plaintiff in error moved to quash the warrants on the ground that the law under which they were issued violated the Federal Constitution in that it constituted an attempt by the State of Maryland to regulate interstate commerce, and that, aside from this, it constituted an unlawful discrimination against a certain class of citizens of the United States, to wit, residents of the District of Columbia. The motions were denied and the plaintiff appealed to the Circuit Court of Prince George County, where the same motions were presented and again denied. Whereupon, there being no appeal in such cases from the Circuit Court of Maryland to the Court of Appeals of Maryland, the plaintiff in error applied to the Court of Appeals of Maryland for the issuance of a writ of certiorari, directing the certifying of the record by the Circuit Court of Prince George County to the Court of Appeals of Maryland. The application for the writ was denied, the court in its denial pointing out that, under the practice in the State of Maryland, in cases appealed from courts of justices of the peace to the circuit courts no further appeal lies. Whereupon, on the application of the plaintiff in error, Judge Beall, a justice of the Circuit Court of Prince George County, allowed a writ of error, which was thereafter duly issued by the clerk of the Federal District Court of Baltimore, as by statute provided.

(2) There are at present some five or six thousand residents of the District of Columbia who are automobile owners and operators. Under the Maryland motor vehicle law in question, no such owner or operator can pass in his motor vehicle beyond the limits of the District of Columbia without having paid

(a) The license tax and

(b) The registration tax

required by that statute without rendering himself liable to arrest followed by a fine and imprisonment.

Furthermore, while certain provisions of the Maryland statute permit temporary free entry into the State of Maryland by the residents of all states of the Union, without the payment of any license or registration fee, that law specifically provides that this so-called privilege is to be denied to the residents of the District of Columbia, thus discriminating against them as a class.

(3) We submit from the aforesaid

(a) That this writ involves matters of importance and public interest, particularly affecting the residents of the District of Columbia;

(b) That the motor vehicle law of Maryland, for violation of which the plaintiff in error was arrested, and which imposes not only a license tax on owners and operators of motor vehicles entering that State, but a registration tax as well, is an unlawful attempt to regulate interstate commerce, and is, in effect, legislation passed for revenue purposes under the guise of a local police regulation;

(c) That the law in question is invalid, in that it discriminates unlawfully against the residents of the District of Columbia;

(d) That should this case retain its present position on the docket, it will not in all probability come up for hearing until the end of the present term or the beginning of the next; in other words, at a time long after the plaintiff in error, as well as many thousands of automobile owners and operators of the District of Columbia, shall have been obliged to pay the license fee and registration fee for the year 1914 wrongfully imposed upon them by the motor vehicle law in question, on pain of arrest, fine, or possible imprisonment, or else be forced to restrict themselves in all matters involving the operation of their machines to the limits of the District of Columbia.

(c) That the action herein, being criminal, is entitled to advancement in hearing under the rules.

Wherefore, the petitioner prays that an order may be passed advancing this cause for early hearing, and that he may have such other and further relief as he is entitled to in the premises.

CLEMENT L. BOUVÉ,
JACKSON H. RALSTON,
WILLIAM E. RICHARDSON,
His Attorneys.

WASHINGTON, D. C., November 3, 1913.

CLARENCE M. ROBERTS, *State's Attorney for Prince George County, Maryland, Equity Building, 319 John Marshall Place, Washington, D. C.*

DEAR SIR: You will please take notice that on Monday, November 10th, we shall present the petition hereto attached to the Supreme Court of the United States, Washington.

J. H. RALSTON.
W. E. RICHARDSON.

Service by copy acknowledged.

Office Supreme Court, U. S.

FILED

OCT 23 1914

JAMES D. MAHER

CLERK

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1913.

No. **77**

JOHN T. HENDRICK

vs.

THE STATE OF MARYLAND.

BRIEF FOR PLAINTIFF IN ERROR.

CLEMENT L. BOUVÉ,
JACKSON H. RALSTON,
WILLIAM E. RICHARDSON,
Attorneys for Plaintiff in Error.



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IN THE
SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1913.

No. 399.

JOHN T. HENDRICK

vs.

THE STATE OF MARYLAND.

BRIEF FOR PLAINTIFF IN ERROR.

I.

Statement of Facts.

On July 27, 1910, the plaintiff in error left his office in the city of Washington, in his automobile, running the same therefrom into Prince George County, in the State of Maryland (Record, page 4). While so operating it, he was arrested on the Baltimore and Washington turnpike, within the limits of the town of Hyattsville, in said county, on the charge of operating his automobile on the highways of Maryland without having procured the certificate of registration required by section 133 of the motor vehicle law of the State of Maryland. The essential part of the automobile

law, with the violation of which the plaintiff in error was charged, and which was section 133 of chapter 207 of the Public General Laws of Maryland for 1910, and now known as section 135, article 56, title "Licenses," of Bagby's Code of Public Civil Laws of Maryland, reads as follows:

"Every owner of one or more motor vehicles, including motorcycles, before the same shall be operated in this State and except as hereinafter otherwise provided, shall file with the commissioner of motor vehicles on a blank furnished by the commissioner an application for the registration of such motor vehicles, containing: (1) The name, residence and post-office address of the applicant; (2) a brief description of each motor vehicle owned or controlled by him, including the name of the maker, the character of the motor power and the amount of such motor power stated in figures of horsepower advertised by the maker thereof; (3) the number of cylinders and diameter of the bore of the cylinder stated in inches, and (4) such other information as shall be required by said commissioner."

The plaintiff in error was thereupon brought before a justice of the peace of said county, and fined \$15.00 for the violation of section 133, having been found guilty thereof under a warrant duly issued by the justice, a motion to quash the same having been denied. Thereupon the plaintiff in error appealed to the Circuit Court of Prince George County, and was tried before its judge on the warrant originally issued on the statement of facts contained in pages 3 and 4 of this record. As the result of such trial, the plaintiff in error was again found guilty, the judgment below being affirmed with costs. No appeal to the Court of Appeals of Maryland was allowable under the laws of the State of Maryland, an appeal having been taken from a justice of the peace to the circuit court, and further appeals only being permissible when the constitutionality of a law had been decided adversely to the State. But in order to ex-

haust every local remedy before applying to this court for relief, the plaintiff in error sought to obtain a writ of certiorari from the Court of Appeals of Maryland directed to the Circuit Court of Prince George County, Maryland. This was refused by that court on the ground that the decision by the lower court was final and not subject to review (*Hendrick vs. Maryland*, 115 Md., 552). A writ of error was prayed, therefore, and duly allowed from the Circuit Court of Prince George County to this court, there being no intermediate court having jurisdiction in the premises.

II.

Assignment of Errors.

The plaintiff assigns for errors here, as in substance he did before the justice of the peace and before the Circuit Court of Prince George County, as shown by the record on pages 2 and 3, as follows:

1. That the court erred in affirming the sentence imposed upon the plaintiff in error by the justice of the peace for Prince George County, under section 140-o of said act, whereby the plaintiff in error was fined in the sum of \$15.00 for temporarily operating his motor vehicle within the limits of the State of Maryland without having procured the registration thereof in accordance with the provisions of section 133 of the motor vehicle law of Maryland, in that, in so far as that section operates upon the automobiles and motor vehicles of non-residents passing from or returning to the District of Columbia by way of Maryland, it prohibits intercourse between the State of Maryland and the District of Columbia by the citizens thereof in the exercise of such intercourse by means of the ordinary vehicles of transportation and travel, except on the payment of a certain amount of money to the State of Maryland in return for the privilege of exercising such act of interstate intercourse in

said State, all of which constitutes an attempt on the part of the State of Maryland to regulate commerce, traffic and intercourse between the States of the Union, contrary to the 8th section of article 1 of the Constitution of the United States.

2. That the court erred in affirming the said sentence of the justice of the peace, and thereby sustaining the validity of said section 133 of the motor vehicle law of Maryland in connection with section 140-o thereof, in its application to the plaintiff in error, because said section is unconstitutional and void, in that it obstructs, impedes and prohibits the exercise of the right conferred on citizens of the United States by the Constitution of the United States to free ingress into, passage through, and egress from the States of the Union in general and the State of Maryland in particular, and to passage to and from the National Capital without taxation or burden imposed by the State for the exercise of said right of passage.

3. That the court erred in affirming the said decision of the justice of the peace, thereby sustaining the validity of section 133 of said act, in that said section, in connection with sections 132 and 140 A, and 140-o of said Maryland motor vehicle law, constitute an unlawful discrimination against the residents of the District of Columbia and in favor of the residents of the States of the Union, in that they prohibit the use of the highways of Maryland to the said residents of the District of Columbia for motoring purposes for any period whatsoever during the year, without first paying the registration fee provided in said act, whereas the payment of said registration fee is not required by the said act from the residents of the States of the Union for two periods of seven consecutive days in the calendar year, contrary to the Constitution of the United States.

4. That the court erred in affirming the said sentence of the justice of the peace, thereby upholding the validity of section 133 in connection with section 140-o of said law,

because said section is violative of the 14th Amendment of the Constitution of the United States, in that its effect is to deprive the plaintiff in error of his property without due process of law, since the amount exacted from the plaintiff in error has no relation to the necessary expense of identification or control, and is therefore arbitrary, and does not constitute a proper exercise of the police power of the State.

5. That the court erred in affirming the sentence of the justice of the peace, thereby sustaining the validity of section 133 in connection with section 140-o of said act, in that the effect and purpose of said sections when applied to non-residents of the State of Maryland is to collect and force the payment of a revenue for the State under the guise of a police regulation from such non-residents, and thus operates to deprive them of their property without due process of law, contrary to the Constitution of the United States.

6. That the court erred in affirming said sentence of the justice of the peace, and thereby sustaining the validity of section 133 in connection with section 140-o, in that if a charge for the use of the roads of the State was contemplated by said act, it is not based upon the value of such use to the person to whom it is given or the detriment to the roads arising from such use, but is unequal, unfair, and class legislation, granting such use according to differing scales of payment and not insuring to the citizens of the United States equal protection of the laws, contrary to the provision of the Constitution of the United States.

7. That the court erred in affirming said sentence of the justice of the peace, and thereby sustaining the validity of said section 133 in connection with section 140-o thereof, because even if said section constitutes a *bona fide* attempt on the part of the State of Maryland to exercise its police power, and not an attempt to collect revenue for the State under the guise of a police regulation, it is, even if valid against the citizens and residents of the State of Maryland, invalid as against the citizens of other States or the District

of Columbia when passing through the State of Maryland in ordinary vehicles of transportation, as jurisdiction to legislate concerning such acts of intercourse lies wholly and exclusively with the Congress of the United States, and beyond the police power of the State of Maryland.

8. That the court erred in affirming said sentence of the justice of the peace, whereby the plaintiff in error was forced to pay a fine of \$15.00 for the violation of section 133 in connection with section 140-o of said act, in that the section being void in its application to the plaintiff in error and violative of the Constitution of the United States, the fine imposed on the plaintiff in error for the alleged violation thereof was a deprivation of the property of the plaintiff in error without due process of law.

III.

ARGUMENT.

The Motor Vehicle Law of Maryland, with the Violation of Which Defendant is Charged, is Unconstitutional.

Section 133 of the motor-vehicle law of Maryland, effective July 1, 1910, provides:

"Every owner of one or more motor vehicles, including motor-cycles to be operated in this State is required to procure from the commissioner of motor vehicles a certificate of registration," etc.

Section 136 provides that the following registration fees shall be paid:

"Six dollars per annum for each motor vehicle with a rating of 20 horsepower or less; twelve dollars per annum for one with a rating of more than 20 H. P. but not more than 40 H. P., and eighteen dollars per annum for one with a rating of more than 40 H. P.

"Three dollars per annum for each certificate of registration of a motor vehicle used for the transportation of merchandise.

"One dollar and eighty cents per annum for each certificate of registration of a motor-cycle.

"Twenty-four dollars per annum for each certificate assigning a general distinguishing number or mark to a manufacturer or dealer in motor vehicles other than motor-cycles."

Section 137 provides:

"That it is unlawful for any person to operate a motor vehicle on any highway without an operator's license from the commissioner of motor vehicles unless he be accompanied by a licensed operator which licensed operator shall be personally liable for any violations of the provisions of sections," etc.

Section 138 provides regulations for fees for operators as follows:

"Two dollars to operate motor vehicles; one dollar to operate motor-cycles."

Section 140-A provides:

"Any resident of another State who has complied with the laws of the State in which he resides requiring the registration of motor vehicles or licensing of operators thereof may use the highways of this State without Maryland registration number or operator's license for two periods of seven consecutive days in each calendar year * * * and provided the resident has not been convicted of violating any of the provisions of sections, etc., of this act. If any non-resident has been so convicted he must register and have a distinguishing number or mark or procure operator's license, as the case may be, in accordance with the requirements for residents of Maryland. The Governor is authorized to grant residents of other States the privilege of using the roads of this State."

Further, article 132 provides that—

“The term ‘State’ except where otherwise expressly provided, and except in section 140-A, includes the Territories and Federal districts of the United States.”

Sections 140-O and 140-P provide for penalties to be imposed upon persons violating the law and for the arrest, bail, trial, and appeal of the accused.

Section 140-R provides for the disposition of fines and other receipts, in that—

“All moneys received by the commissioner of motor vehicles pursuant to the provisions of this subtitle, except such as shall be necessary for his salary and the expenses of his office as hereinbefore provided, shall be accounted for and remitted by said commissioner to the State treasurer who shall create a special fund thereof, which fund shall be expended in to to on the roads in the State of Maryland.”

It is contended that—

I. The Maryland law is unconstitutional because it is an unauthorized attempt on the part of the State to regulate interstate commerce.

II. Because it directly prevents, impedes and burdens the right granted by the Constitution to every citizen of the United States to pass freely into and out of every State of the Union, and to come from and to the National Capital without taxation or burden on the part of the State.

III. Because it discriminates against the residents of the District of Columbia in favor of the citizens of the several States by allowing the latter temporary free ingress and egress from and into the State of Maryland, whereas such freedom of ingress and egress is absolutely forbidden to the residents of the District.

IV. That it is further unconstitutional in that it does not constitute a reasonable or lawful exercise of the police power for the protection, happiness and health of the residents of the State of Maryland, but

is, on the contrary, merely a revenue measure exercised in the guise of the police power.

V. That the license and registration fees imposed by the law have no relation to the necessary expense of identification or control of motor vehicles, and are not based upon the value of the use of the highways to the person who makes such use thereof or of the detriment to the road arising from such use, but is unequal, unfair and class legislation, granting such use according to differing scales of payment, and not ensuring to the citizens of the United States equal protection of laws, contrary to the provisions of the Constitution of the United States.

I. THE ACT IS AN ILLEGAL ATTEMPT TO REGULATE INTER-STATE COMMERCE.

(a) *Passing into or through States of the Union in automobiles is an act of interstate commerce.*

Commerce between the States consists of intercourse and traffic between their citizens, and includes the transportation of persons and property * * * for that purpose as well as the purchase, sale, and exchange of commodities. * * * The power (to regulate it vested in Congress) also embraces within its territory all instrumentalities by which that commerce may be carried and the means by which it may be aided and encouraged (*Gloucester Ferry Co. vs. Penna.*, 114 U. S., Law Ed. 29, p. 158). Commerce among the States, strictly considered, consists in intercourse and traffic, including in these terms the transportation and transit of persons * * * as well as the purchase, sale, and exchange of commodities (*Mobile Co. vs. Kimball*, 102 U. S., Law Ed. 26, p. 238). Commerce undoubtedly is traffic, but it is something more; * * * it is intercourse (*Gibbons vs. Ogden*, 9 Wheaton, p. 1). The thousands of people who daily pass over a bridge connecting two States may be as truly said to be engaged in commerce as if they

were shipping cargoes of merchandise from New York to Liverpool (Covington Bridge, etc., *vs.* Kentucky, 154 U. S., 204). The power to regulate commerce among the States includes authority to regulate the subjects and transactors of commerce as well as the means, such as the vehicles, cars, steamboats, coaches, and wagons, by which the subjects of commerce are transported (U. S. *vs.* Col. & N. W. R. R. Co., 157 Fed. Rep., 325). Importation from one State to another is the indispensable element, the test, of interstate commerce (*ibid.*). The power to regulate it (commerce) includes all the instruments by which such commerce may be conducted (Welton *vs.* Missouri, 91 U. S., 295). It is not only the right but the duty of Congress to see to it that intercourse between the States and the transmission of intelligence are not obstructed or unnecessarily encumbered by State legislation. This principle has never been modified by any subsequent decision of this court. Other commerce deals only with persons or with visible or with tangible things, but the telegraph transports nothing visible or tangible; it carries only ideas, wishes, orders, and intelligence. * * * If intercourse between persons in different States by means of telegraph messages, conveying intelligence or information, is commerce among the States, which no State may directly burden or unnecessarily encumber, we cannot doubt that intercourse between persons in different States by means of correspondence through the mails is commerce among the States within the meaning of the Constitution (International Text Book Co. *vs.* Pigg, 217 U. S., 91).

Reasoning by analogy, as does the court in the case last cited, if intercourse between persons in different States by means of correspondence through the mails is commerce among the States within the meaning of the Constitution, it cannot be doubted that the bodily transmission of persons from State to State is commerce among the States within the meaning of the same document.

(b) The matter of interstate transportation of passengers is one capable of uniform regulation and legislation, and is thus exclusively within the domain of Congress and wholly apart from regulation or interference on the part of the States.

And it needs no argument to show that the commerce between the States which consists in the transportation of persons and property between them is a subject of a national character and requires uniformity of regulation. Congress alone can deal with such legislation; its non-action is a declaration that it shall remain free from burdens imposed by State legislature (*Gloucester Ferry Co. vs. Penna.*, 114 U. S., Law Ed. 29, p. 158). * * * The rule has been asserted with great clearness that whenever the subjects over which a power to regulate commerce has been asserted are in their nature national or admit of some uniform system or plan of regulation they may justly be said to be of such a nature as to require exclusive legislation by Congress. Surely transportation of passengers or merchandise through a State, or from one State to another, is of this nature (*State Freight Tax*, 15 Wall., 232).

(c) Where, in subjects requiring uniformity of legislation, such as interstate transportation of passengers, the State law comes into direct conflict with the commerce clause, it is illegal, although a bona fide attempt to exercise the police power of the State.

Whatever may be the nature and reach of the police power of the State it cannot be exercised over a subject confided exclusively to Congress by the Federal Constitution. *Henderson vs. Mayor and Chy Lung vs. Freeman*, 92 U. S., 275, deny validity to any State legislation professing to be an exercise of the police power for protection against evils from abroad which is beyond the necessity for its exercise

whenever it interferes with the rights and powers of the Federal Government (*Williams vs. Fears*, 50 L. R. A., p. 685). * * * If the State power (when conflicting with the Federal) be necessary to the preservation of the morals, the health or safety of the community, it must be maintained. But this exigency is not to be founded on any notions of commercial policy or sustained by a course of reasoning about that which may be supposed to affect in some degree the public welfare. The import must be of such a character as to produce by its admission, or use, a great physical or moral evil (*The License Cases*, 5 Howard, 504, 592). In the case of *Leisy vs. Hardin*, 100 U. S., p. 135, the court held that a State did not have the right to pass a law barring the importation into its limits of spirituous liquors in the attempted exercise of its police power. Regarding the exercise of the police power by the States, the court said, in *Bowman vs. Chicago & N. W. R. R. Co.*, 125 U. S., 465, citing *Railroad Company vs. Husen*, 95 U. S., 465:

"All these exertions of power are in immediate connection with the protection of persons and property against noxious acts of other persons, or such use of property as is injurious to others. They are self-defensive. But whatever may be the nature and reach of the police power of the State, it cannot be exercised over a subject confided exclusively to Congress by the Federal Constitution. It cannot invade the domain of the National Government. * * * Neither the unlimited power of a State to tax nor any of its large police powers can be exercised to such an extent as to work a practical assumption of the powers properly conferred upon Congress by the Constitution."

The mere fact that a State police regulation *affects* interstate commerce does not make such a regulation invalid.

"But we think it must be considered in view of a long line of decisions that it is settled that nothing

which is a direct burden upon interstate commerce can be imposed by the States without the assent of Congress" * * * (Brennan *vs.* Titusville, 153 U. S., 289).

The same court held that—

"* * * neither State licenses nor indirect taxation of any kind nor any system of State regulation can be imposed upon interstate any more than upon foreign commerce; and that all acts of legislation producing any such result are to that extent, unconstitutional and void."

Of course, State police regulations providing for the security of the lives, limbs, health, and comfort of persons, and protection of property are valid exercises of the State's power to legislate, when not curtailed by any constitutional restrictions; "but in making such internal regulations, the State cannot impose taxes upon persons passing through the State or coming into it merely for a temporary purpose, especially if connected with interstate or foreign commerce" (Robbins *vs.* Shelby County, etc., 120 U. S., 489).

(d) *The exaction of license and registration fees as conditional to the privilege of the use of the roads of the State of Maryland is an attempt to regulate interstate commerce directly, and imposes a burden on such commerce.*

In the case of *Pickard vs. The Pullman Southern Car Co.*, 117 U. S., 134, where the State of Tennessee attempted to make the passage of each palace car through the State subject to the payment of a license tax of \$50.00 per car, the court said:

"The tax was imposed as a condition precedent to the right of the plaintiff to run and use the 36 sleeping cars owned by it as it used and ran them in the State of Tennessee. * * * The tax was a unit for the privilege of transit of the passenger * * * and really one on the right of transit," * * *

and held the law unconstitutional. In *Pullman's Palace Car Co. vs. Twombly*, 29 Fed. Rep., 667, the court said, referring to the case of *Tennessee vs. the Pullman Car Company*, 117 U. S., 34:

"In that case it was decided that the levying of a privilege tax by the State of Tennessee was a regulation of commerce. The legislature required the payment of \$50.00 per car for the privilege of running through the State. That this was an attempt to regulate the business, is apparent, and as such was declared beyond the power of the State."

The following emphatic citation from the *Adams Express Co. vs. The Auditor*, 166 U. S., 976, lays down the principle that States have not the power to tax participators in interstate commerce for the privilege of taking part in such business in such State:

"Again and again has this court affirmed the proposition that no State can interfere with interstate commerce through the imposition of a tax, by whatever name called, which is, in effect, a tax for the privilege of transacting such commerce."

In the opinion delivered in this case, the court referred to the case of *Pullman Palace Car Co. vs. Penna.*, 141 U. S., 18; Law. Ed., 35, 613. Mr. Justice Gray, in delivering the opinion of the last-mentioned case, enunciated the same principle in the following terms:

"Much reliance is also placed by the plaintiff in error upon the cases in which this court has decided that citizens or corporations of one State cannot be taxed by another State for a license or privilege to carry on interstate or foreign commerce within its limits. But in each of those cases, the tax was not upon the property employed in such business but upon the right to carry on the business at all, and was therefore held to impose a direct burden upon the commerce itself. *Moran vs. New Orleans*, 112 U. S.,

69; *Pickard vs. Pullman Co.*, 117 U. S., 34; *Robbins vs. Shelby County, etc.*, 120 U. S., 489; *Leloup vs. The Port of Mobile*, 127 U. S., 640."

From what has gone before, it is clear that the Maryland law, in limiting to two weeks the time during which residents of other States may "use the highways of this State" without paying for it, in providing for payment of such privilege during the rest of the year, and denying the right of passage absolutely to residents of the District of Columbia except on payment therefor, is, in the first place, assuming the right to legislate concerning a subject over which Congress has exclusive jurisdiction, and, in the second place, is exacting two distinct sums of money for the exercise of the privilege of transit through the State, thereby placing a direct burden on those engaged in interstate intercourse. The case cannot be amended either by alleging that the license fee or registration fee is imposed in the proper exercise of the police power of the State, for the better guarding of the health, happiness, and safety of its citizens, or that the amount collected by means of the imposition of these fees and paid into the State treasury is to be expended in the upkeep of the State roads used by automobilists. Taxation for either purpose is equally unjustifiable; for, as the cases cited show, such legislation cannot be justified even as a *bona fide* attempt to exercise the police power, much less as a frank attempt to collect revenue for the benefit of the State at the expense of citizens of the United States engaged in interstate commerce or in the exercise of their constitutional right to pass freely throughout the State of Maryland. It is true that *all* legislation on the part of the State which merely *affects* interstate commerce does not constitute a regulation of it or impose an unauthorized burden thereon. But as far as this case is concerned, the question of a direct imposition of a burden on commerce is not an open one, for if the words of the act itself, the "use of the highways of this State," is the consideration for the license and registration fees, and the

use of said highways is, furthermore, specially designated in section 140-A as a "privilege," now, as the Supreme Court has repeatedly laid down the proposition that a State tax on the privilege of transit through a State is a direct burden on interstate commerce, the Maryland law, even if a *bona fide* police measure, instead of a revenue measure, would, under the rule enunciated in *Bowman vs. The Railroad* and *Brennan vs. Titusville* (*supra*) be necessarily invalid.

2. THE MARYLAND LAW IS UNCONSTITUTIONAL AS VIOLATIVE OF THE RIGHTS OF CITIZENS OF THE UNITED STATES TO PASS INTO AND THROUGH MARYLAND.

Article 4, section 2, of the Federal Constitution provides that the citizens of each State are entitled to all privileges and immunities of citizens of the several States, and section 1 of the 14th Amendment provides that no State shall make or enforce any law which shall abridge privileges or immunities of citizens of the United States.

Privileges and immunities, within the meaning of the 14th Amendment, include the right to free ingress and egress from State to State and to and from the national capital (8 Cyc., 1042, Constitutional Law). This principle was enunciated in the *Slaughterhouse Cases*, 16 Wall., 83 U. S., 394; in *Paul vs. Virginia*, 8 Wall., 75 U. S.; Law Ed., 19, p. 357; in 30 Federal Cases, case No. 18260, and finally in the celebrated case of *Crandall vs. Nevada*, 6 Wall., 35. Referring to this case, in his lectures on Constitutional Law, page 260, Mr. Justice Miller says:

"There is another rather curious instance where the States have been forbidden by the courts to use the power of taxation. It was first discussed in the case of *Crandall vs. Nevada*, where the principle was declared that every man in this broad country had a right to travel all through it for purposes of business or pleasure, regardless of State lines, and that no State could levy a tax upon him for that privilege."

In the Nevada case the State had passed a law providing that a tax of one dollar should be levied upon every person leaving the State by any railroad, stage coach or other vehicle engaged in transporting passengers for hire. The court said:

"Having determined that the statute of Nevada imposes a tax upon the passenger, for the privilege of leaving the State, or passing through it, by the ordinary mode of passenger travel, we proceed to inquire if it is for that reason in conflict with the Constitution of the United States."

After considering whether the act constitutes a violation of the interstate commerce clause of the Constitution, the court continues:

"But we do not consider that the question before us has been determined by the two clauses (commerce) of the Constitution, which we have been examining."

After showing that the Government has the right to summon its citizens from all parts of the Union, the court proceeds:

"But if the Government has these rights on his own account, the citizen also has correlative rights. He has the right to come to the seat of Government * * * he has a right to free access to its sea-ports * * * and this right is, in its nature independent of the will of any State over whose soil he must pass in the exercise of it. * * * If the right to pass through a State by a citizen of the United States is one granted to him by the Constitution it must be as sacred from State taxation as the right derived by the importer as to the payment of duties * * *"

The court continues, citing the Passenger Cases:

"We are all citizens of the United States, and as members of the same community must have the right

to pass and repass through every part of it without interruption, as freely as in our own State. And a tax imposed by a State for entering its territory or harbors is inconsistent with the rights which belong to citizens of every State as members of the Union, and with the objects which that Union was intended to attain. Such a power in the States would produce nothing but discord, and mutual irritation, and they very clearly do not possess it."

Although it would seem from an examination of later cases involving the point at issue in *Crandall vs. Nevada*, that the same conclusion might have been reached by the court in that case, on the ground that interference by the State was unconstitutional as a direct burden on interstate commerce, nevertheless, the ground on which that decision was rested has never been disputed or even been questioned. The case of *Williams vs. Fears*, L. R. A., 50, p. 685, citing *Moran vs. New Orleans*, 112 U. S. Law Ed., 27, p. 633, sustains the same principle in the words that "a State has no right to impose a burden upon the means by which citizens may be transported from one State to another." In *Cook vs. Penna.*, 97 U. S., 566; Law Ed., 23, 1017, the court there said, referring to *Crandall vs. Nevada*:

"But the court said in the Passenger Cases, that it (the Nevada tax) was a tax which must fall on the passenger and be paid by him for the privilege of riding through the State by the usual vehicles of travel."

The fundamental proposition on the subject as expressed by Mr. Justice Miller was cited in the case of *Moran vs. New Orleans*, 112 U. S., 69; 28 Law Ed., 655, in this comprehensive language:

"* * * The right of the States in this mode (Nevada tax) to impede or embarrass the constitutional operation of the Government or the rights that its citizens hold under it has been uniformly denied."

It is no defense, and cannot be argued in support of the Maryland law, that, in being subjected to the payment of the registration and the license fees required by it, a citizen of the District of Columbia, or of other States of the Union, incurs no greater obligation than the citizens of the State of Maryland itself, for—

“If a State chooses to exact conditions for allowing the passage or carriage of persons or freight through it into another State, the nature of the exaction is not changed by adding to it similar conditions for allowing transportation wholly within the State.” *Fargo vs. Stevens*, 121 U. S., 230; Law Ed., 30, p. 983.

This principle is even more clearly stated in the case of *Robbins vs. Shelby County, etc.*, 120 U. S., 489, where the court said:

“To say that the tax, if invalid as against drummers from other States, operates as a discrimination as against the drummers from Tennessee against whom it is conceded to be invalid, is no argument, because the State is not bound to tax its own drummers * * * as said before the State may tax its own internal commerce; but that does not give it any right to tax interstate commerce.”

“* * * when,” says Cooley, *Constitutional Limitations*, fifth edition, pages 601-2, “national regulations exist under which rights are established” (in this case the rights are established by virtue of constitutional guarantees) “or privileges given, the State can impose no burdens which shall, in effect, make the enjoyment of those rights and privileges contingent upon the payment of tribute to the State.” And in his work on *Taxation*, second edition, page 99, the same learned author says:

“A tax on travel may be as clearly void as any other tax on interstate or foreign intercourse. The State cannot tax the privilege of passing out or com-

ing into the State, either directly by levying a tax on the person coming or going, or indirectly by requiring carriers to pay a tax in respect to each person carried or brought by them."

The case of *Crandall vs. Nevada* is cited in the note in support of this statement.

3. THE MOTOR-VEHICLE LAW DISCRIMINATES UNCONSTITUTIONALLY AGAINST THE RESIDENTS OF THE DISTRICT OF COLUMBIA.

Section 140-A, under the title "Non-resident owners and operators," provides that any owner or operator not a resident of the State of Maryland who shall have complied with the laws of the STATE in which he resides may, under certain specific conditions, operate his vehicle upon the public highways of this State and "may use such highways, not exceeding two periods of seven consecutive days in each calendar year, without complying with the provisions of section 133 and section 137." Section 132 of said act, entitled "Definitions," provides that "the term STATE, as used in this subtitle except when otherwise expressly provided, and except in section 140-A shall also include the Territories and Federal districts of the United States."

In other words, the term State in paragraph 140-A does not include the Federal District of Columbia, thus making it impossible for any automobile owner, a resident of said District, to take advantage of the privilege of operating his vehicle on the highways of Maryland for two periods of seven consecutive days in each calendar year, under the conditions set out in said section. It is thus obvious that the law, purposely and unlawfully, discriminates against all the residents of the District, even as to the temporary privilege of free ingress into and use of the highways of the State of Maryland, and in favor of the citizens of other States of the Union.

4. THE MOTOR-VEHICLE LAW IS FURTHER UNCONSTITUTIONAL IN THAT IT IS NOT A BONA FIDE EXERCISE OF THE POLICE POWER OF THE STATE, BUT AN UNLAWFUL ATTEMPT TO COLLECT REVENUE FOR THE STATE.

Section 140-R of said law entitled "Disposition of fines and other receipts" provides that—

"All moneys received by the commissioner of motor vehicles, pursuant to the provisions of this subtitle except such as shall be necessary for his salary and the expenses of his office as hereinbefore provided, shall be accounted for and remitted by said commissioner to the State treasurer, who shall create a special fund thereof, and on the first day of April of each year, one-fifth to be paid to the mayor and city council of Baltimore, for use on its roads and streets, and the balance to be used in the oiling, maintenance, and repair of the modern roads now being built by the State and counties, and for no other purpose."

The above provision states succinctly the real purpose of the act, or, to be more correct, the real purpose of exacting the license and registration fees. The commissioner of motor vehicles is, as far as the collection of these fees is concerned, an internal-revenue officer of the State, with the authority to reimburse himself to the extent of his salary and to the extent of the expenses of the revenue bureau of which he is chief, and under the obligation of turning over to the State treasurer the balance of the revenues collected to be expended in the upkeep of the State roads. In other words, this is an illegal attempt to make the residents of the District of Columbia contribute to the expenses of maintaining and building the roads of Maryland if they should venture even for a moment to pass into the territory of the State of Maryland in private vehicles which have long since become recognized as the ordinary vehicles of travel in this country.

5. THE LAW IS UNCONSTITUTIONAL IN THAT THE REGISTRATION FEES PROVIDED FOR AND GRADED ACCORDING TO DIFFERING SCALES OF PAYMENT HAVE NO RELATION TO THE NECESSARY EXPENSE OF IDENTIFICATION, OR CONTROL OF MOTOR VEHICLES, AND CONSTITUTES ARBITRARY, UNEQUAL, UNFAIR, AND CLASS LEGISLATION, AND DOES NOT ENSURE TO THE CITIZENS OF THE UNITED STATES EQUAL PROTECTION OF THE LAWS.

Granting that reasonable registration and license fees may be the subject of necessary and proper legislation on the part of the State, as far as those subject to the jurisdiction of that State are concerned, such legislation is, as has already been shown, illegal and improper when the attempt is made to apply it to those not subject to that jurisdiction. If the registration and license regulations of the State were such as to constitute a reasonable police regulation, nevertheless, as the authorities cited show, a police regulation, no matter how valid as applied to the residents of the State, when imposed as a condition precedent to the privilege of entering into or transit through the state of subjects of interstate commerce, is invalid and unconstitutional as directly burdening those engaged in such commerce. Aside, however, from its primary source of invalidity, it is further objectionable not only as a tax for revenue purposes, laid under the guise of the exercise of the police power, but because it is graded arbitrarily, with no reference to the question of identification or control of motor vehicles. It is to be noted that registration fees are graded into three classes according to the horsepower of the machine; the lowest tax, six dollars, for a machine with a rating of twenty horsepower or less; the next of twelve dollars, for a machine of more than twenty horsepower and not more than forty, and eighteen dollars for machines of over forty horsepower. Taking six dollars as the cost of registration of the twenty-horsepower motors, which, to say the least, is a ridiculously high estimate, it is

obvious that when the cost is doubled and tripled for cars of greater horsepower the sums required are out of all proportion to the cost of registration, and their enforced collection loses all semblance of a tax, and is merely the accumulation by means of an arbitrary impost of the property of the car owner without due process of law. Again, the mere fact of the graduation of the various registration fees required by law in proportion to the horsepower shows on its face that the purpose and end of the registration is not identification—the true *raison d'être* of registration—but the attainment of revenue for purposes far different from meeting, even approximately, the cost of registration.

6. THE TAX IMPOSED IS NOT LAID AS COMPENSATION FOR THE USE OF THE ROADS.

In the court below the position in brief of the defendant in error was that the license fee required under their statute to be paid was in point of fact like ordinary licenses, but was a charge made for the use of the property and as such defensible. Just how, the property being public in character and the only interest of the State where it had interest at all in the roads being as trustee for the benefit of the public of something which all the public must use, one portion of the public, because of their citizenship should be charged one rate and another portion at another rate, and absolutely forbidden the use except under penalties, was never explained. We will discuss briefly, however, the contentions on behalf of the State as if they were at least colorable; diverting for the moment only to the fact that under the reasoning indulged in by the State, it would be entirely proper for the State to allow Marylanders and Pennsylvanians, for instance, to walk on the public roads free of charge, while, at the same moment, a resident of the District of Columbia, doing the same thing, would be subject to fine and imprisonment except he pay a license for permission in such manner to breathe the air of the State.

If in support of the general contention that the State has the right to charge reasonable compensation for the use of its property, the case of the Gloucester Ferry Company *vs.* Pennsylvania, 114 U. S., page 167, was cited. A reference to that case will show that the court held that the State could not impose a tax upon the ferry which—

“is a means—and a necessary means—of commercial intercourse between the States bordering upon their waters, and it must therefore be conducted without the imposition by the State of taxes or other burdens upon the commerce between them.”

In other words, the court held that the fact once proven that property is a means of commercial intercourse between the States, absolutely prohibits taxation or other burdens upon commerce passing between States by means of such property. Then the court, in order to show the distinction between such taxation and the imposition of charges “as compensation for the carriage of persons in the way of tolls or fares,” uses the language cited in counsel’s brief. In support of this language, the court plainly shows what it means by the words used by reference to the wharfage cases cited in counsel’s brief, and which will be cited in due course.

There was then cited the case of *Keokuk Packet Company vs. The City*, and the kindred cases referred to by the Supreme Court in the *Gloucester Ferry Company* case. These cases will be considered in connection with other propositions which were submitted by defendants, for it cannot be stated too positively that their analogy to this case, as bearing on the question of compensation, cannot possibly be material here, where the terms of the statute itself show conclusively that no question of compensation was in the minds of the legislators at the time that the act was framed. But let the act speak for itself. Its title is:

“An act to repeal sections 131 to 140, both inclusive, of article 56 of the Code of 1904 of the Pub-

lic General Laws of Maryland, title 'Licenses,' sub-title 'Motor Vehicles,' as amended by chapter 449 of the acts of 1906, and to re-enact the same with amendments, and add additional sections thereto to be known as sections 140*a* to 140*t*, the whole to provide for the appointment of a Commissioner of Motor Vehicles, the regulation, operation and registration of motor vehicles, including motorcycles, the licensing of operators of motor vehicles, the tampering with motor vehicles and the unauthorized use of the same; the taking of commissions or other consideration on the sale or purchase of motor vehicles or supplies, parts or labor on the same, the placing in the highways of substances injurious to the feet of persons or animals or tires on wheels of vehicles, the rules of the road applicable to vehicles in general, and the disposition of receipts of the office of said Commissioner of Motor Vehicles."

Thus it appears that in the title at least nothing is contained from which it could be inferred that the act is anything but an ordinary police measure of the State. The idea of compensation is not even remotely hinted at.

Now, to refer to those passages in the act containing references to the organization and distribution of the funds collected under the law.

Section 131 provides:

"That all salaries of said Commissioner and clerk or clerks, together with all office and other expenses, including the cost of the Commissioner's bond, shall be paid out of the receipts of his office. He shall transmit on the first day of each and every month, such moneys as may not be needed to carry out the provisions of this sub-title to the State Treasurer, to be used as provided in section 140*r* hereof, and shall receive a receipt therefor."

Section 133 provides:

"The State Commissioner of Motor Vehicles upon payment of the registration fee hereinafter provided for shall file such application in his office, etc."

Section 136 provides:

"The following fees shall be paid to the Commissioner of Motor Vehicles for the certificate of registration issued by him, in accordance with the provisions in this sub-title."

The registration fees are then graduated according to horsepower.

Section 138 provides:

"The following fees shall be paid the Commissioner of Motor Vehicles for licenses to operate motor vehicles in this State."

Then follow the license fees.

Thus far there is absolutely nothing on which to predicate the assumption that the money to be collected is for purposes of compensation; but should any lingering doubt remain, it is submitted that section 140*r*, which provides for the disposition of the sums arising from registration and licensing of automobiles, and from the collection of fines and penalties must set the matter definitely at rest. This section provides that

"All moneys received by the Commissioner of Motor Vehicles pursuant to the provisions of this subtitle, except such as shall be necessary for his salary and the expenses of his office as hereinbefore provided, shall be accounted for and remitted by said Commissioner to the State Treasurer, who shall create a special fund thereof, and on the first day of April in each year, one-fifth thereof to be paid to the Mayor and the City Council of Baltimore for use on its roads and streets, and the balance to be used for the oiling, maintenance, and repair of the modern roads now being built by the State and counties, and for no other purpose. Disbursements of the remaining four-fifths from this fund shall be made by the Treasurer to the counties on drafts for expenditures

which have actually been made in repairs on State aid roads certified to by the Maryland Geographical and Economic Survey Commission, and to the State Roads Commission for expenditures which have actually been made in repairs on State roads constructed by that body, on draft from such body itself. The State Roads Commission shall not receive in any year out of the whole fund available for distribution a greater proportion than the proportion which the total mileage of State roads completed to April 1st of any year shall bear to the total mileage of both State aid roads and State roads completed to that date. And no county shall receive in any year from such fund a greater proportion than its total mileage of State roads bears to the total mileage of State aid roads completed before April 1st in any year. The remainder of said fund shall be distributed among the counties in the proportion aforesaid."

This section specifically provides that the funds received shall be expended (1) for the roads and streets of the city of Baltimore, and (2) for the State aid roads certified to by the Maryland Geographical and Economical Survey Commission, and (3) the State roads constructed by the State Roads Commission. Now it must be borne in mind that the law imposes the tax as a condition precedent to *the operation of motor vehicles in the State* (sections 133-138). This wording includes necessarily all the roads throughout the State. It cannot be seriously contended that the non-resident automobilist, operating his machine on any of the many hundred miles of roads other than those provided for in the act, and who has been forced to pay his license and registration fee prior to using the same, under penalty of the law, is paying out money by way of compensation for the use of roads which he has never derived and the improvement of which is not even provided for in the law itself. Not only does the act, neither in its title nor in its body, contain expressions from which it can be inferred that its object was to obtain compensation for the use of the roads of the State, but such

an interpretation is placed beyond all possibility of consideration by the provisions of section 140r, showing explicitly that the money to be paid is to be confined exclusively to the improvement, first, of the streets of the city of Baltimore, which the non-resident automobilist may never visit, and, second, to a limited class of roads which he may never use.

On the contrary, the act as seen by its title, purports to be a police regulation of the State. The taxes exacted are specifically designated as license and registration fees to be paid prior to operation of the cars *in the State*; these fees are to be used in part for the payment of the salary and all office and other expenses of the Commissioner of Motor Vehicles, whose duty it shall be "faithfully to exercise every reasonable effort to secure the enforcement of this subtitle," *not* so that the State may be compensated for the use of certain roads, but "so that the motor vehicle traffic in this State shall be reasonable and efficiently regulated, with due regard to the convenience of persons using motor vehicles, and the safety of the public in general" (section 131). It regulates the speed of motor vehicles, imposes obligations arising in case of accident, forbids the driving of motors by certain persons and contests of speed on the highways, regulates the use of bells, brakes, lights, the use of warning signals, etc., forbids tampering with and unauthorized use of motor vehicles, provides rules of the road, and penalizes infractions of its provisions. Some of the above provisions point to the police nature of the regulations provided; others indicate more strongly the revenue nature of the measure; but by no canon of construction, however strained, however extreme, could its purpose be held primarily or inferentially to be that of obtaining compensation for the use of the highways of the State.

The fact that the act uses the term "the use of the highways" and bars this absolutely to residents of the District and conditionally to citizens of other States, virtually makes the registration and license fees the consideration of such

use. But this can in no way support the contention that the money is to be paid by way of compensation for such use. The section refers to *the highways of the State*, the greater part of which receive no benefit by the act, and if there is no money expended and no work done there can be no compensation. We are not to be understood as admitting that the system of taxation was devised for the compensation of those roads intended to be benefited by the act. This proposition, in the absence of any indication in the act supporting it, and in view of the provisions of section 140r just cited, we positively deny. The object of the act is clear; it being obvious that the only way in which automobiles can pass through the State is by the roads themselves, and the act prohibiting their operation on any and all roads except on payment of the fees provided proves to a demonstration that the fees so exacted are demanded by the State for the exercise of the privilege of passing through it; a privilege, we repeat, which it is beyond the power of the State constitutionally to grant or prohibit.

Thus it appears that the statute cannot, on any just grounds of construction or logic, be considered to provide for compensation for the use of the State roads. At the same time it may be well to point out that, as a matter of fact, the analogy that the State may claim, aside from the fact that it cannot be claimed in view of the present statute, does not ring true.

All that the court held in the wharfage cases above cited was that a municipal corporation of the State, having by the law of its origin an exclusive right to make wharves, collect wharfage, and regulate wharfage rates, can charge and collect wharfage in amounts proportionate to the tonnage of the vessels making use of the same. The said acts granting municipalities this authority were upheld by the Supreme Court on the ground that merely because the charges made were proportionate to the tonnage of the vessels did not make the charge itself a tonnage charge. In the

absence of any constitutional weakness there appeared to the court to be no good reason why just compensation should not be demanded and paid for wharfage services tendered and accepted. As the court said in the Keokuk case, 24 Law Ed., 380:

"A vessel may use the wharf or not at its election, and may thus incur liability for wharfage or not at the choice of the master of the vessel."

Now, note the difference between the wharfage cases and the present case. In the wharfage cases the only ground on which compensation could be justly demanded was on the theory of a proportionate *quid pro quo*, that is to say, the amount of compensation to be paid depended upon the actual use made of the wharfage privileges by the master of the vessel; whereas in this case an arbitrary amount is fixed by the law wholly without reference to the amount of use enjoyed by the non-resident automobilists of those highways especially provided for by the act.

Again, the only theory on which compensation was permitted in the wharfage cases was that those wharves were maintained at the expense of the city; whereas here the non-resident is forced to contribute to the maintenance of certain designated roads, absolutely irrespective of whether or not he makes use of them.

In the wharfage cases the proposition to the master of the vessel held valid was this: "You may come into our harbors and moor there free of charge, but if you seek to take advantage of the privileges offered by our wharfing system you must pay for them at a reasonable rate, because we are at the expense of maintaining them." In the case at bar the proposition to the non-resident automobilist is this: "You cannot operate your car anywhere in this State without paying a license and registration fee graduated according to the horsepower of your machine. This money is to be used for improving certain roads, and unless you pay it,

irrespective of whether or not you actually use the improved property, you will be fined or sent to prison."

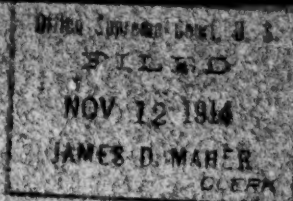
Enough has been said to show that the wharfage cases are in no sense analogous to the case at bar. It may, however, be said that if the State has a right to exact payment from non-residents passing over its roads in motor vehicles, on the theory of compensation for the use thereof *under statutes which admit of such a construction*, it is immaterial what kind of vehicle is used, and in fact whether use is made of any vehicle at all for that purpose. On the theory advanced it would require similar compensation from all persons passing over the highways in a carriage or on foot, in this way closing its avenues of travel to citizens of every State except on the payment of a consideration. We feel that if the compensation theory can, under a sufficient act, be sustained, this must necessarily follow; and we further feel, in view of this consideration alone, such a proposition is monstrous and would never for a moment be seriously entertained by any State or Federal court in the Union.

IV.

Conclusion.

We respectfully submit that the proceedings below should be reversed and the warrant directed to be dismissed.

CLEMENT L. BOUVÉ,
JACKSON H. RALSTON,
WILLIAM E. RICHARDSON,
For Plaintiff in Error.



IN THE
SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1914.

No. 77.

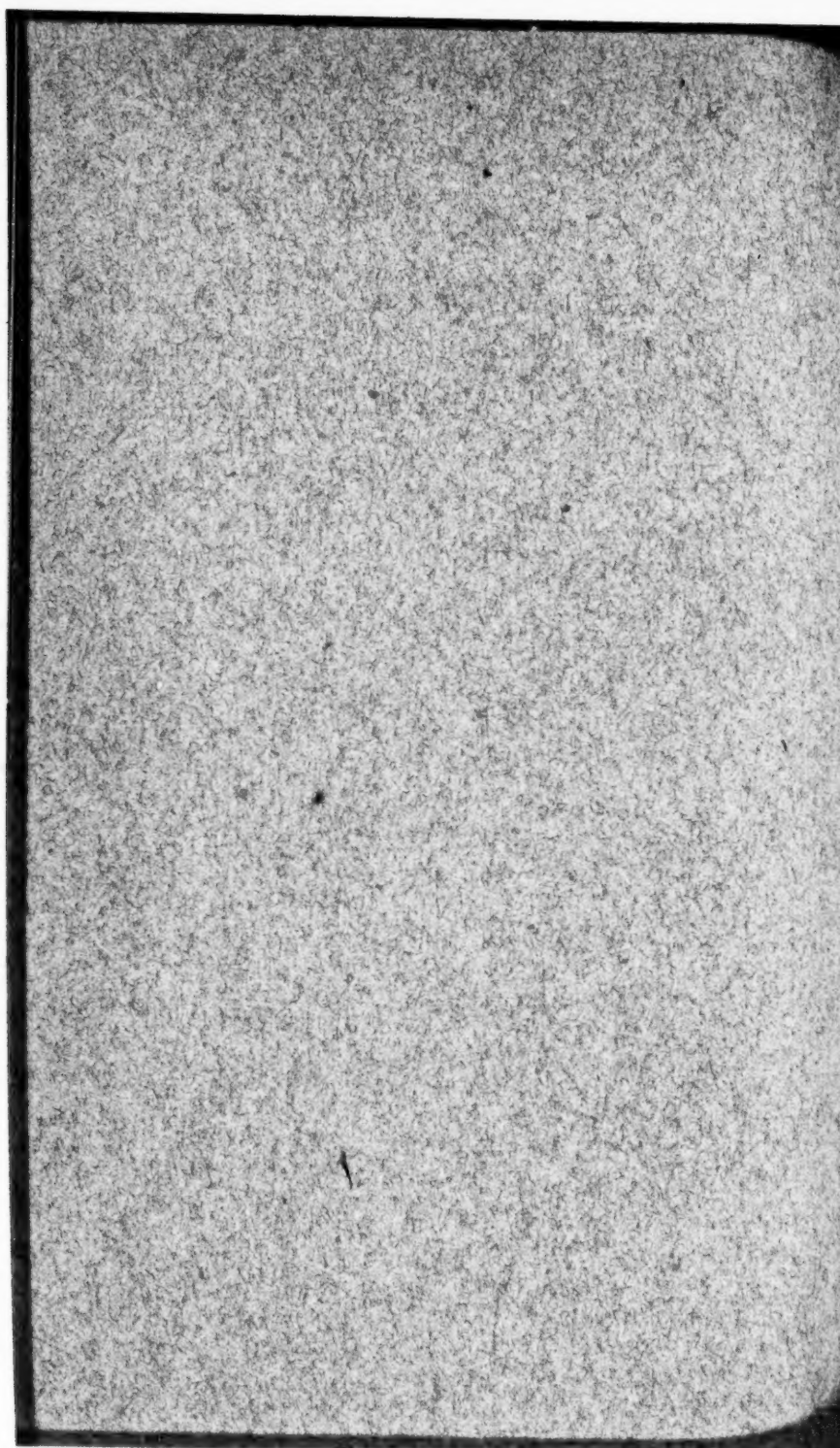
JOHN T. HENDRICK

vs.

THE STATE OF MARYLAND.

APPENDIX
BRIEF FOR PLAINTIFF IN ERROR.

JACKSON H. RALSTON,
OSBORNE I. YELLOTT,
Attorneys for Plaintiff in Error.



IN THE
SUPREME COURT OF THE UNITED STATES.

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No. 77.

JOHN T. HENDRICK

vs.

THE STATE OF MARYLAND.

APPENDIX
BRIEF FOR PLAINTIFF IN ERROR.

Automobile Law Passed by the General Assembly of Maryland, 1910.

Ch. 207.

AN ACT to repeal Sections 131 to 140, both inclusive, of Article 56 of the Code of 1904 of the Public General Laws of Maryland, title "Licenses," subtitle "Motor Vehicles," as amended by Chapter 449 of the Acts of 1906, and to reenact the same with amendments, and add additional sections thereto, to be known as Sections 140*a*, 140*b*, 140*c*,

140d, 140e, 140f, 140g, 140h, 140i, 140k, 140l, 140m, 140n, 140o, 140p, 140q, 140r, 140s and 140t, the whole to provide for the appointment of a Commissioner of Motor Vehicles, the regulation, operation and registration of motor vehicles, including motorcycles, the licensing of operators of motor vehicles, the tampering with motor vehicles and the unauthorized use of the same; the taking of commissions or other consideration, on the sale or purchase of motor vehicles or supplies, parts or labor on the same, the placing in highways of substances injurious to the feet of persons or animals or tires on wheels of vehicles, the rules of the road applicable to vehicles in general, including motor vehicles, and the disposition of receipts of the office of said Commissioner of Motor Vehicles.

SECTION 1. *Be it enacted by the General Assembly of Maryland*, That Sections 131 to 140, both inclusive, of Article 56 of the Code of 1904 of Public General Laws of Maryland, title "Licenses," subtitle "Motor Vehicles," as amended by Chapter 449 of the Acts of 1906, be and the same are hereby repealed and re-enacted, and that additional sections, to be known as Sections 140a, 140b, 140c, 140d, 140e, 140f, 140g, 140h, 140i, 140k, 140l, 140m, 140n, 140o, 140p, 140q, 140r, 140s and 140t, are hereby enacted, the whole to read as follows:

Commissioner of Motor Vehicles.

131. There shall be appointed by the Governor, by and with the consent of the Senate, one sober and discreet person who shall have been a registered voter in the State of Maryland for three consecutive years next preceding the date of his appointment, and who shall be known as the "Commissioner of Motor Vehicles;" and shall devote his time to the duties of such office. Said Commissioner shall be subject to removal by the Governor for official misconduct or incompetency as in the case of other civil officers. Said Commis-

sioner shall be appointed for two years, and the term of his office shall commence on the first Monday of May next ensuing his appointment. He shall hold office until his successor is appointed and qualifies. Said Commissioner of Motor Vehicles shall receive a salary of three thousand (\$3,000) dollars per annum payable monthly. He shall be required to give bond in the sum of twenty thousand dollars (\$20,000), or such additional sum as the Governor may require, for the faithful performance of his duties. The Commissioner shall appoint such assistants and at such salaries as he may deem necessary, subject to the approval of the Governor. He shall maintain an office in the city of Baltimore, open daily, excepting Sundays and holidays, during such hours as the Governor may prescribe. He shall file with the Governor, on the last day of April in each and every year, an account of the receipts and disbursements of his office, as provided for in this subtitle. The salaries of said Commissioner and clerk or clerks, together with all office and other expenses, including the cost of the Commissioner's bond, shall be paid out of the receipts of his office. He shall transmit on the first day of each and every month such moneys as may not be needed to carry out the provision of this subtitle, to the State Treasurer, to be used as provided in Section 140r hereof, and shall receive a receipt therefor. Said Commissioner shall be conversant with the construction of motor vehicles, and shall be required to make oath that he has personally operated motor vehicles, other than motorcycles, at least two thousand miles prior to his appointment. Immediately upon the qualification of said Commissioner, as provided for in this Section, he shall obtain from the Secretary of State all existing records appertaining to the registration of motor vehicles and licensing of chauffeurs, including the names and addresses of owners, and the names of makers, the manufacturer's numbers and the horsepower of such motor vehicles, and such other information as said records may disclose, and said Commissioner may require, and said Commissioner shall pay therefor to the Secretary of

State such an amount as said Secretary of State may certify as necessary to compensate him for the expense incurred in preparing and furnishing such information. In case of the absence of the Commissioner of Motor Vehicles or of his inability, from any cause, to perform the duties of his office, the Governor shall designate some properly qualified person to perform such duties, such person to have all the powers and perform all the duties of said Commissioner during such absence or inability as aforesaid, and to receive such compensation per diem, and to give such bond as the Governor may prescribe.

In addition to the specific duties imposed upon the Commissioner of Motor Vehicles by the provisions of this subtitle, it shall be his duty faithfully to exercise every reasonable effort to secure the enforcement of this subtitle, so that motor vehicle traffic in this State shall be reasonably and efficiently regulated with due regard to the convenience of persons using motor vehicles and the safety of the public in general. Said Commissioner shall have power to administer the oath prescribed by law in all cases in which he may deem the same necessary, in the performance of his duties prescribed by this sub-section.

Definitions.

132. Wherever the term "motor vehicle" is used in this subtitle, except when otherwise expressly provided, it shall be taken to include all vehicles, including motor bicycles or motor cycles, propelled by any power other than muscular power, except such vehicles as run only upon rails or tracks. The term "local authorities" shall include all officers of counties, cities, towns or villages, as well as all boards, committees and other public officials of such counties, cities, towns or villages. The term "state," as used in this subtitle, except when otherwise expressly provided, and except in Section 140a, shall also include the territories and federal districts of the United States. The term "owner" shall include

any person, firm, association or corporation owning a motor vehicle, or having the exclusive use thereof, under lease, hiring or rental thereof, or otherwise. The terms "highway," "roads," "public highway" or "public road" shall include any highway or thoroughfare of any kind used by the public, whether actually dedicated to the public and accepted by the proper authorities or otherwise.

Registration of Motor Vehicles.

133. Every owner of one or more motor vehicles, including motorcycles, before the same shall be operated in this State, and except as hereinafter otherwise provided, shall file with the Commissioner of Motor Vehicles, on a blank furnished by the Commissioner, an application for the registration of such motor vehicles, containing, (1) the name, residence and post office address of the applicant; (2) a brief description of each motor vehicle owned or controlled by him including the name of the maker, the character of the motor power and the amount of such motor power stated in figures of horse power as advertised by the maker thereof; (3) the number of cylinders and diameter of the base of the cylinder stated in inches, and (4) such other information as shall be required by said Commissioner. The horsepower of all motor vehicles propelled by gas engines, except motorcycles, shall be computed and recorded upon the following formula, and the annual license fee hereinafter provided for, paid in accordance therewith: square the diameter of the cylinder, multiply by the number of cylinders and divide by two and one-half. For all motor vehicles propelled by a steam engine, the rating shall be based on the system of rating adopted by the United States Government. Should any other motor power be used, the Commissioner of Motor Vehicles is empowered to adopt such formula to govern their rating as he may deem proper. The said Commissioner of Motor Vehicles upon the payment of the registration fee hereinafter provided for, shall file such application in his office and register such motor vehicle, as-

signing to it a distinguishing number or make, or mark, and shall thereupon issue to the owner thereof a certificate of registration, which shall contain the name, place of residence and postoffice address of the owner, and the number or mark assigned to such motor vehicle. Such certificate shall be in convenient form and shall at all times be carried upon such motor vehicle, and shall be subject to examination upon demand by any proper officer. Said Commissioner shall also, without expense to the applicant, issue and deliver to such owner two duplicate metal plates or markers bearing the letters "Md" and the number or mark assigned to such motor vehicle as aforesaid, the figures thereon to be not less than five inches high, and each stroke to be not less than one half inch in width. Such plates or markers shall be of a distinctly different color or shade each year, to be designated and selected by the Commissioner of Motor Vehicles, and there shall be at all times a marked contrast between the color of the number of plates and that of the numerals or letters thereon. In the case of motorcycles one number plate or marker shall be furnished, the letters and figures thereon to be at least one inch high and one-eighth of an inch in width. The certificate provided for in this section and the right to use the number plate or marker aforesaid shall expire at midnight on December thirty-first of each and every year.

Records—Expiration of Registration in Case of Sale.

134. The Commissioner of Motor Vehicles shall keep a record of all statements filed with him and all certificates issued by him, which record shall be open to public inspection. Upon the transfer of ownership of any motor vehicle, its certificate of registration and the right to use the number plates or markers aforesaid, shall expire, and upon surrender to said Commissioner of such certificate and number plates, he shall refund for the remaining months in the year, the proportionable part of the fee for the registration of such motor vehicle for the entire year, the amount so refunded

to be computed as to entire months and no fraction of months, and said Commissioner may, at his discretion, reassign the distinguishing mark or number contained or described in such certificate. In the event any plate or marker issued by said Commissioner under the provisions of this or the preceding section shall be lost or destroyed, he shall issue a duplicate thereof at cost price. In the event that said Commissioner shall be unable to immediately furnish any plate or marker herein provided for to the person entitled thereto, he may issue a certificate to such person, stating that such marker has been ordered, and giving the number and general design thereof, and such person may thereafter provide and use a temporary plate or marker, similar in form to the plate or marker herein provided for, until said required plate or marker has been so furnished.

Registration by Manufacturers and Dealers.

135. Every manufacturer of or dealer in motor vehicles, including individuals, corporations and copartnerships may, instead of registering each motor vehicle owned or controlled by him, it or them, make application upon a blank provided by the Commissioner of Motor Vehicles for a general distinguishing number or mark, and said Commissioner may, if satisfied of the facts stated in said application, grant said application, and issue to the applicant a certificate of registration containing the name, place of residence and address of the applicant, and the general distinguishing number or mark assigned to him, it or them, which shall be made in such form as said Commissioner may determine, the cost of such distinguishing number or mark and of duplicates thereof to be borne by such applicant; and all motor vehicles owned or controlled by said manufacturer or dealer shall, until sold or loaned or let for hire, be regarded as registered under such general distinguishing number or mark. Nothing in this section shall be construed to apply to a motor vehicle operated by a manufacturer or dealer for

private use or for hire or loaned, in which cases the motor vehicles so used shall be registered and the registration fees paid as in the case of ordinary owners. Nothing in any law or ordinance prohibiting the display in any public park or parks of this State of any sign or advertising device shall be taken as applying to the distinguishing number or mark assigned to dealers in motor vehicles under the provisions of this subtitle.

All of the provisions of Section 133 of this subtitle shall apply to manufacturers and dealers excepting as in this section otherwise provided.

Fees for Registration of Motor Vehicles.

136. The following fees shall be paid to the Commissioner of Motor Vehicles for the certificate of registration issued by him in accordance with the provisions of this subtitle:

Class A. Six dollars per annum for each motor vehicle with a rating of twenty horsepower or less; twelve dollars per annum for one with a rating of more than twenty horsepower and not more than forty horse-power; and eighteen dollars per annum for one with a rating of more than forty horse-power.

Class B. Three dollars per annum for each certificate of registration of a motor vehicle used for the transportation of merchandise.

Class C. One dollar and eighty cents per annum for each certificate of registration of a motor cycle.

Class D. Twenty-four dollars per annum for each certificate assigning a general distinguishing number or mark to a manufacturer or dealer in motor vehicles, other than motor-cycles.

Such certificates shall entitle such manufacturer or dealer to use four duplicate sets of the general distinguishing number or mark assigned to him as in Section 135 provided, and subject to the qualifications in said section, provided the same shall be interchangeable among the cars of such manu-

facturer or dealer during the current year in which issued, but shall limit the use of such number to four cars at any time; and any manufacturer or dealer wishing to use at one time more than four sets of such general distinguishing number or mark, may acquire the right to do so by paying an additional sum of six dollars for each such additional set he may so wish to use, or, if he so elect, may pay a flat sum of one hundred dollars, in which event he may use as many sets as he may desire. And any manufacturer or dealer who shall at any time have attached to or displayed upon his cars, whether in his place of business or on the road, or both, more sets of such distinguishing number or mark than he is entitled to use as aforesaid, shall be deemed guilty of displaying fictitious numbers on all of said cars, and shall be subject to a penalty of not exceeding fifty dollars in the case of each of said cars, and in case of a repetition of such offense his right to use such distinguishing number or mark may be revoked by the Commissioner of Motor Vehicles, in his discretion.

Class E. Ten dollars per annum for each certificate assigning a general distinguishing number or mark to a manufacturer or dealer in motorcycles.

The charges herein prescribed shall be for the entire twelve months of the year, and if the certificate is issued in any month after January, one-twelfth is to be deducted from each of the charges above stated for each expired month, but not fractions of a month.

Licenses to Operators.

137. No person shall operate a motor vehicle upon any highway of this State until he first shall have obtained an operator's license for the purpose, but nothing herein contained shall be taken to prevent the operation of a motor vehicle by any unlicensed person, other than a person whose application has been refused or whose license has been suspended or revoked, if accompanied by a licensed opera-

tor, which licensed operator shall also be personally liable for any violation of any of the provisions of Sections 140b, 140c, 140d, 140e and 140l of this subtitle or non-resident operators as hereinafter provided. Licenses for operating motor vehicles shall be issued by the Commissioner of Motor Vehicles, but no license shall be issued to any person under the age of sixteen years, excepting for operators of motorcycles, who shall not be under the age of 14 years, provided that persons over fourteen years of age and under 16 years of age, may, upon a special examination as to capacity to operate, receive a special license to operate any motor vehicle belonging to such person, his or her father or guardian. Applications for licenses shall be made upon blanks furnished by said Commissioner, and said application blanks and said licenses shall be in such form and contain such provisions, not inconsistent with this subtitle, as said Commissioner may determine. The Commissioner may require, in addition, should be deemed necessary, an actual demonstration of the qualifications of the person applying for such license, and may refuse to issue the same, if in his judgment, the safety of the public would be JEOPARDIZED thereby, but said applicant shall have the right to appeal if license is refused, as provided in Section 139 of this subtitle. A number shall be assigned to each licensee, and a proper record of all applications for licenses and of all licenses issued shall be kept by said Commissioner at his office and shall be open to public inspection. Each license shall state the name, age, place of residence and post-office address of the licensee and the number assigned to him and shall entitle the licensee to operate any car of any make. Said license certificate shall at all times be carried by the licensee when he is operating a motor vehicle upon the highways of this State, and shall be subject to examination upon demand by any proper person, and said licensee shall have endorsed thereon, in the proper handwriting of the licensee, the name of said licensee, and, when requested by a proper officer, in the discharge of his duties under the law, said licensee

shall write his name in the presence of said officer, to the end that the identity of said licensee may be determined. No license badge shall be worn.

Fees for Operators.

138. The following fees shall be paid the Commissioner of Motor Vehicles for licenses to operate motor vehicles in this State: Two dollars to operate motor vehicles other than motorcycles, and one dollar to operate motorcycles, provided, however, that any one who, before this subtitle becomes effective, has paid for and obtained a license to operate motor vehicles in this State, or has obtained an owner's certificate of registration, can, by making the application required in Section 137 of this subtitle, and by surrendering such certificate of license to the Commissioner of Motor Vehicles, receive therefor, without cost, an operator's license under this subtitle; subject, however, to the other provisions of said Section 137. Such license shall be good until suspended or revoked as hereinafter provided, and shall not be required to be renewed annually.

Suspension or Revocation of Operator's License—Record of Conviction.

139. The Commissioner of Motor Vehicles may, after due hearing, upon not less than three days' notice in writing, said notice to be sent by registered letter to the address given by the operator when applying for license certificate, which shall constitute sufficient form of notice, suspend or revoke the operator's license issued to any person under Section 137 of this subtitle, for any cause which he may deem sufficient: but every applicant for an operator's license whose application shall be refused by said Commissioner and every licensee whose operator's license shall be suspended or revoked by said Commissioner may appeal to the Governor of this State from such decision, refusal, suspension

or revocation, the decision of the Governor to be final, and such appeal not to operate as a stay of such order or decision by the Commissioner. A full record shall be kept by every Court or Justice of the Peace of this State of every case in which a person is convicted of a violation of any of the provisions of Sections 140A, 140B, 140C, 140D, 140E and 140L of this subtitle, and a certified abstract of such record shall, within ten days after the date of such conviction, be transmitted by such Court or Justice of the Peace to the Commissioner of Motor Vehicles. Said Courts and Justices of the Peace shall furnish to said Commissioner the details of all flagrant cases which may be heard before him, and they may make such recommendations to said Commissioner as to the suspension or revocation of the operators' licenses of the parties defendant in such cases as they may deem proper. Said Commissioner shall keep such records in his office and they shall be open to public inspection.

Whenever any person licensed to operate a motor vehicle upon the public highways of this State shall have been convicted of any violation of any of the provisions of Section 140A, 140B, 140C, 140D, 140E and 140L of this subtitle, said Commissioner may, in his discretion, suspend or revoke the operator's license, of such person, and upon a third conviction within a period of twelve calendar months, said person shall, in addition to the penalties for such offense, incur a forfeiture of his operator's license, and the said Commissioner shall thereupon revoke and require a return of the same. No person shall for the period of three months from the date of the revocation of his operator's license, be capable of receiving a new operator's license, nor thereafter except in the discretion of the Commissioner.

Display of Markers.

140. Every Motor Vehicle, except motor-cycle, and as hereafter otherwise provided, shall at all times while being used or operated in this State, have displayed, entirely un-

obscured and kept reasonably cleaned, the number plate or markers issued by the Commissioner of Motor Vehicles for such Motor Vehicles as hereinafter provided.

One of such plates or markers shall be displayed conspicuously on the front and the other on the rear of such motor vehicles, the one on the rear to be fastened so as not to swing. Every motorcycle while being used or operated in this State shall have displayed on the rear thereof the plate or marker furnished by the Commissioner of Motor Vehicles as aforesaid, said plate or marker to be so fastened as to be entirely unobscured and to be kept reasonably clean.

No motor vehicle while used or operated in this State, shall have displayed upon either the front or rear of such vehicle more than two plates or markers, nor shall any person display or permit to be displayed upon any motor vehicle operated by him the registration number belonging to another vehicle, or a fictitious number plate or marker, provided, however, that in the event of a sale of a motor vehicle, the person using the same may for a period of five days, and no longer, operate such motor vehicle under the number assigned to it as aforesaid, provided he have and display on demand of any proper officer the actual consent in writing of such previous owner to use such number; and provided also that where it clearly appears that the registration number has been lost by accident, no penalty shall be imposed.

Non-Resident Owners and Operators.

140A. Any owner or operator not a resident of this State, who shall have complied with the laws of the State in which he resides, requiring the registration of motor vehicles, or licensing of operators thereof, and the display of identification or registration numbers on such vehicles, and who shall cause the identification number of such State, in accordance with the laws thereof, and none other, together with the initial letter or letters of said State to be displayed on his motor vehicle as in this subtitle provided while used or oper-

ated upon the public highways of this State, may use such highways not exceeding two periods of seven consecutive days in each calendar year, without complying with the provisions of Sections 133 and 137 of this subtitle, if he obtains from the Commissioner of Motor Vehicles and displays on the rear of such vehicle a tag or marker which the said Commissioner of Motor Vehicles shall issue in such form and contain such distinguishing marks as he may deem best, upon the application of said owner or operator; provided that if any non-resident be convicted of violating any provisions of Sections 140B, 140C, 140D, 140E and 140L of this subtitle, he shall thereafter be subject to and required to comply with all the provisions of said Sections 133 and 137 relating to the registration of motor vehicles and the licensing of operators thereof; and the Governor of this State is hereby authorized and empowered to confer and advise with the proper officers and legislative bodies of other States of the Union and enter into reciprocal agreements under which the registration of motor vehicles owned by the residents of this State will be recognized by such other States, and he is further authorized and empowered, from time to time, to grant to residents of other States the privilege of using the roads of this State as in this section provided in return for similar privileges granted residents of this State by such other States.

Speed of Motor Vehicles.

140B. No person shall operate a motor vehicle or motorcycle over any public highway of this State recklessly, or at a rate of speed greater than is reasonable and proper, having regard to the width, traffic and use of the highway, or so as to endanger the property or life or limb of any person. If the rate of speed of a motor vehicle operated upon the public highway of this State exceeds twelve miles per hour in the thickly settled or business parts of cities, towns or villages, or eighteen miles per hour in the outlying or not thickly settled parts of cities, towns or villages, or twenty-five miles

per hour in the open country outside of the limits of cities, towns or villages, such rate of speed shall be *prima facie* evidence that the person operating such vehicle is operating the same at a rate of speed greater than is reasonable and proper, and in violation of the provisions of this section and the burden of proof shall be upon him to show that such rate of speed was not greater than was reasonable and proper, as above set forth. Nothing in this section or any other section of this subtitle shall be taken in any way to add or detract from the right of any person injured in his person or property by the negligent operation of a motor vehicle to sue and recover damages as in the case of the negligent use or operation of other vehicles, and the violation of any provision of this subtitle shall not be taken to give any right of action to any individual who would not be entitled to the same in the absence of such provision.

Speed to be Reduced or Vehicle to be Stopped—When.

140C. Upon approaching any person walking in the traveled portion of any public highway or a horse or any animal being led, ridden or driven thereon, or a crossing of intersecting public highways, or a bridge, or a sharp turn, or a curve, or a deep descent, and also in passing such person or such horse or other animal, and in traversing such crossing, bridge, turn, curve or descent, and in approaching or about to pass or passing a street car which has stopped or about to stop to receive or discharge passengers, the person operating a motor vehicle or motor cycle, shall have the same under control and shall reduce its speed to a reasonable and proper rate. If such horse or other animal being so led, ridden or driven, shall appear to be frightened, or if the person in charge thereof shall signal so to do by raising his or her hand vertically, the person operating such motor vehicle or motor cycle shall bring the same to a stop, and if traveling in the opposite direction shall remain stationary so long as may be reasonable to allow such horse or other animal to pass, or, if

traveling in the same direction, shall use reasonable caution in thereafter passing such horse or animal, but no person shall give such a signal to stop unless necessary.

Accidents.

140D. In case of any accident, such as collision with a person, animal or vehicle, the operator of the motor vehicle in such collision must immediately stop and give his name, residence, and the number of his license to operate, upon demand, and render such assistance as may be reasonable and necessary, within his power.

Certain Persons Forbidden to Operate Motor Vehicles.

140E. No person shall operate a motor vehicle on the public highways of this State when intoxicated, or at all under the influence of liquor or drug, or in a race, or on a bet or wager, except as hereinafter provided.

Contests of Speed on Highways.

140F. The Board of County Commissioners or the proper local authorities having charge of roads and highways (in Baltimore City the Board of Police Commissioners) may, in their discretion, set aside for a given time a specified public highway for speed contest or contests between motor vehicles, to be conducted under such proper restrictions as they may determine for the safety and convenience of the public.

Brakes, Bell, Lights.

140G. Every motor vehicle, while in use on the public highways of this State, shall be provided with adequate brakes, and with a suitable bell, horn or other device for signaling and excepting motor cycles shall during the period of from one hour after sunset to one hour before sunrise dis-

play two or more white lights on the forward part of such vehicle, so placed as to be seen from the front and of sufficient illuminating power to be visible at a distance of two hundred feet, and shall also display on the rear of such vehicle, a lamp so placed that it shall show a red light from the rear and a white light at the side, and a motor cycle shall display on the forward part one white light; provided, however, that the operator of such motor vehicle may proceed to his destination in event of bona fide failure of his lights to operate, if he sounds his bell, horn or other signaling device at least once in every two hundred feet, does not proceed at a rate of speed greater than one mile in six minutes, and takes the first reasonable opportunity to put his lights in order, otherwise to be deemed guilty of a violation of the foregoing provision.

Use of Warning Signals.

140H. Within the limits of cities, towns or villages only horns blown by means of hand pressure upon a rubber bulb shall be used, or small electric bells of moderate sound. The horn or other signaling device shall be used for the purpose of giving a signal of approach whenever necessary to prevent injury to other persons using the highways and shall not be sounded while passing a horse or other animal in the open country.

Allowing Motor Vehicles to Stand Unattended.

140I. No person operating or in charge or control of any steam or electric motor vehicle in this State shall allow the same to stand unattended on any highway without securing or locking the lever or other device by which the same is started, or taking other reasonable precautions to prevent such vehicle being started by unauthorized persons; and no person operating or in charge or control of any gasoline motor vehicle shall leave the same unattended as aforesaid without first stopping the motor and cutting off the electric current.

Motor Vehicles not to be Tampered With.

140K. No person shall, without authority of the owner or person in charge thereof, climb upon or into any automobile, whether the same is in motion or at rest, or hurl stones or other missiles at the same, or at the occupants thereof, or while such motor vehicle is at rest and unattended, sound any horn or other signal device, or attempt to manipulate any of the levers, the starting crank, brakes or machinery thereof, or set said vehicle in motion, or otherwise damage, tamper or interfere with the same.

Unauthorized Use.

140L. No CHAUFFER or other person shall drive or operate any motor vehicle upon any street or highway of this State in the absence of the owner of such motor vehicle without his consent.

No CHAUFFER or other person having the care of a motor vehicle for the owner shall receive or take, directly or indirectly, any bonus, discount, or other consideration for supplies or parts furnished or purchased for such motor vehicles, or on any work or labor done thereon by others, or on the purchase of any motor vehicle for his employer; and no person furnishing such supplies or parts, work or labor or selling any motor vehicle shall give or offer any such CHAUFFER or other person having the care of a motor vehicle for the owner, directly or indirectly, any bonus, discount or other consideration thereon. CHAUFFERS, while operating motor vehicles on the public highways of this State, shall be subject to all the provisions and penalties prescribed in this subtitle.

Rules of the Road.

140M. All vehicles when being driven upon the highways of this State upon meeting others shall turn to the right of the center of the highway so as to pass without interference;

and any vehicle overtaking another going in the same direction shall pass to the left of the vehicle so overtaken; said vehicle so overtaken shall promptly upon signal, turn to the right in order to allow free passage on the left. At the intersection of public highways all vehicles shall keep to the right of the center of such highways when turning to the right, and pass to the right as the center of such intersection when turning to the left.

Throwing Tacks, Nails, Glass, etc., on Highways.

140N. No person shall knowingly throw or place, or cause to be thrown or placed, on or upon any highway or bridge, any tacks, nails, wire, scrap metal, glass, crockery, or other substance injurious to the feet of persons or animals, or to the tires or wheels of vehicles, including motor vehicles.

Penalties.

140O. Any person violating any provision of Section 137, 139, 140D, 140E or 140L of this subtitle shall be fined not more than Five Hundred Dollars (\$500) or imprisoned for not more than NINETY days or both for each and every offense. And any person violating any other provision of this sub-title shall be fined not more than Fifty dollars (\$50) for each first offense. In default of the payment of the above fines, there shall be imposed an imprisonment in the county or city jail, as the case may be for a period not exceeding one day for each one dollar of the fine so imposed, the imprisonment in no event to exceed NINETY days for any single offense; providing that any offender who shall have been found guilty of the violation of any provision of this sub-title and made to pay a fine or suffer imprisonment therefor, and who shall be convicted of a second or additional offense of the same provision committed within six months from date of conviction of the first offense, may for such second or additional offense be fined in double the

amount herein prescribed for the first offense, or may be imprisoned as aforesaid for a period not exceeding six months for a violation of Section 137, 139, 140D, 140E or 140L, or not exceeding thirty days for a violation of any other section of this sub-title, or both, and in the event of the non-payment of the fine imposed for such second offense, there may be imposed an imprisonment in the County or City jail, as the case may be, for a period not exceeding one day for each one dollar of the fine so imposed, the imprisonment in no event to exceed six months for any single second offense committed as aforesaid.

Arrest, Bail, Trial and Appeal.

140P. In case any person shall be taken into custody because of a violation of any of the provisions of this sub-title, he shall forthwith be taken in the Counties of this State before the nearest justice of the peace, committing magistrate or police justice, or if in Baltimore City before the nearest police justice, and be entitled to an immediate hearing; and if such hearing cannot then be had, he shall be released from custody on giving bond or undertaking executed by a fidelity or surety company authorized to give such bonds in this State, or by a person or persons acceptable as surety or sureties by said magistrate or police justice, such bond or undertaking to be in an amount equal to the maximum amount prescribed as the fine for such offense, and to be conditioned for his appearance at the time and place set for the hearing of the charges preferred against him, or on giving his personal undertaking to appear as aforesaid secured by the deposit of a sum equal to the maximum amount prescribed as the fine for such offense, and in case such bond or undertaking shall not be given or deposit made as aforesaid, the provisions of law in reference to bail in cases of misdemeanor shall apply. In all complaints of the violation of any of the provisions of this sub-title the justice of the peace, committing magistrate or police justice before whom the alleged offender is taken as aforesaid, shall

have jurisdiction to hear and determine such complaint and impose the fine or sentence herein provided, but any person so convicted of any offense under this sub-title shall have the right to appeal from the judgment of such justice of the peace, committing magistrate or police justice to the Criminal Court of Baltimore, if convicted in Baltimore City, or court of criminal jurisdiction of any county in which he may be so convicted, and such court on such appeal shall hear the case *de novo*, provided, however, that such appeal be taken within thirty days from the date of judgment. Upon appeal being prayed as aforesaid, it shall be the duty of the magistrate to endorse upon the papers "appeal prayed," and transmit the same to the proper court as aforesaid. It shall not be necessary in such case, for the grand jury to find either presentment or indictment nor shall formal pleading be required, but the trial of all such cases on appeal shall be had upon the original papers transmitted to said court by the justice of the peace, committing magistrate or police justice as aforesaid, the defendant or traversee upon such appeal being entitled to have a jury trial. In the event of such appeal, the judgment, sentence or decision so appealed from shall be stayed by the giving of security as hereinbefore provided for, but in case such security be not given, the fine and costs imposed shall be paid, and the same returned to the party paying the same in the event of reversal on appeal. The justice of the peace or court before whom a final conviction shall be had under the provisions of Sections 140A, 140B, 140C, 140D, 140E or 140L, of this sub-title, shall endorse upon or attach to the license certificate of the person so convicted the date and particulars of such conviction; and any person destroying, erasing or concealing said endorsement or statement so attached, or failing to display the same together with said license certificate when required so to do by the provisions of this sub-title shall be deemed guilty of a misdemeanor, and upon conviction thereof, be fined a sum not exceeding two hundred dollars or imprisonment for a period not exceeding thirty days, or both.

Motor Vehicles as Bail.

140Q. Any person arrested for violating any of the provisions of this sub-title may tender as bail a motor vehicle or motorcycle of which he is the owner, and if such vehicle is of sufficient value it shall be accepted as security for his appearance in lieu of any other bail.

Disposition of Fines and Other Receipts.

140R. All fines, penalties and forfeitures of bonds imposed or collected under any of the provisions of this sub-title, shall be paid over within ten days after the receipt thereof to the Commissioner of Motor Vehicles with a statement accompanying the same, setting forth the action or proceeding in which such moneys were collected, the name and residence of the defendant, the nature of the offense, and the fine, penalty, forfeiture or sentence, if any imposed. And this section shall not be considered as repealed by the passage hereafter of any law providing for a different disposition of fines and penalties in any County or other municipal division of this State unless the same contains a repeal of this section by express reference thereto. Said Commissioner of Motor Vehicles is hereby empowered, in the name of the State of Maryland, to take all steps necessary to enforce the collection and prompt return of all such fines, penalties and forfeitures of bonds, and when any motor vehicle shall have been deposited as security under the provisions of this sub-title, and said security is forfeited, the same may be disposed of by the Commissioner of Motor Vehicles or under his direction by the officer having the said motor vehicle in charge, at public auction, and the proceeds thereof dealt with pursuant to the provisions of this sub-title, unless, within ten days after notice by mail to the owner of such motor vehicles, or the person leaving the same as security, the same shall be redeemed. All moneys received by the Commissioner of Motor Vehicles pursuant to the provisions of this sub-title, except such as shall be necessary for his salary and the expenses of his

office as hereinbefore provided, shall be accounted for and remitted by said Commissioner to the State Treasurer who shall create a special fund thereof, and on the first day of April in each year $\frac{1}{5}$ thereof to be paid to the Mayor and City Council of Baltimore for use on its roads and streets, and the balance to be used for the oiling, maintenance and repair of the modern roads now being built by the State and Counties and for no other purpose. Disbursements of the remaining $\frac{4}{5}$ from this fund shall be made by the Treasurer to the counties on drafts for expenditures which have actually been made in repairs on State Aid Roads certified to by the Maryland Geological and Economic Survey Commission, and to the State Roads Commission for expenditures which have actually been made in repairs on State Roads constructed by that body, on drafts from such body itself. The State Roads Commission shall not receive in any year out of the whole fund available for distribution, a greater proportion than the proportion which the total MILEAGE of State Roads completed to April 1st of any year shall bear to the total mileage of both State Aid Roads and State Roads completed to that date. And no County shall receive in any year from such fund a greater proportion than its total mileage of State Aid Roads bears to the total mileage of State Aid Roads completed before April 1st in any year. The remainder of said fund shall be distributed among the Counties in the proportion aforesaid.

Respecting Speed of Motor Vehicles.

140S. Any town or village in any County which has any local law or regulation of the speed of motor vehicles or which shall hereafter adopt the same, and which shall regulate such speed in a manner different from that provided in this sub-title, shall give notice of the same by posting a notice printed in a plain and legible manner and in letters not less than 4 inches high, on the right side of the road or roads entering the said town or village in any County at the boundary line of the same and stating the local speed limit,

and unless the notice is posted and maintained as aforesaid and in a CONSPICUOUS manner, then the speed regulation provided in this subtitle shall prevail, any such local law or regulation to the contrary notwithstanding.

Public Vehicles Exempt.

140T. All motor vehicles used by the Police Department of any city, town, village or county of this State, and all motor vehicles used by the Fire Department or Salvage Corps of any city, town, village or county of this State, and all ambulances, road rollers, street sprinklers, street sweepers or cleaners or traction engines used for the hauling of agricultural machinery are hereby exempt from the provisions of this subtitle.

Repeal.

SECTION 2. And be it enacted, that all Acts and parts of Acts and laws and parts of laws, inconsistent herewith or contrary hereto be and the same are hereby repealed to the extent of such inconsistency.

Effective.

SECTION 3. And be it enacted that this Act shall take effect upon and from the date of its passage, but no prosecution based upon violations of Sections 133, 134, 135, 136, 137, 138 and 140 of this Act shall be brought for any offense committed prior to July 1st, 1910, provided that the plates and markers required by Section 132 of Chapter 449, of the Acts of 1906, are displayed upon such vehicles as required by said Section 132 of Chapter 449 of the Acts of 1906; and provided that until July 1st, 1910, certificates of Registration of Motor Vehicles shall be issued by the Secretary of State as in Chapter 449 of the Acts of 1906 provided.

MEMORANDUM.

Amended by Chapter 133 of the Acts of 1912, Chapters 832 and 564 of the Acts of 1914.

FILED
OCT 12 1914
JAMES D. MAHER
CLERK

IN THE
Supreme Court of the United States.

OCTOBER TERM, A. D. 1914.

No. 77.

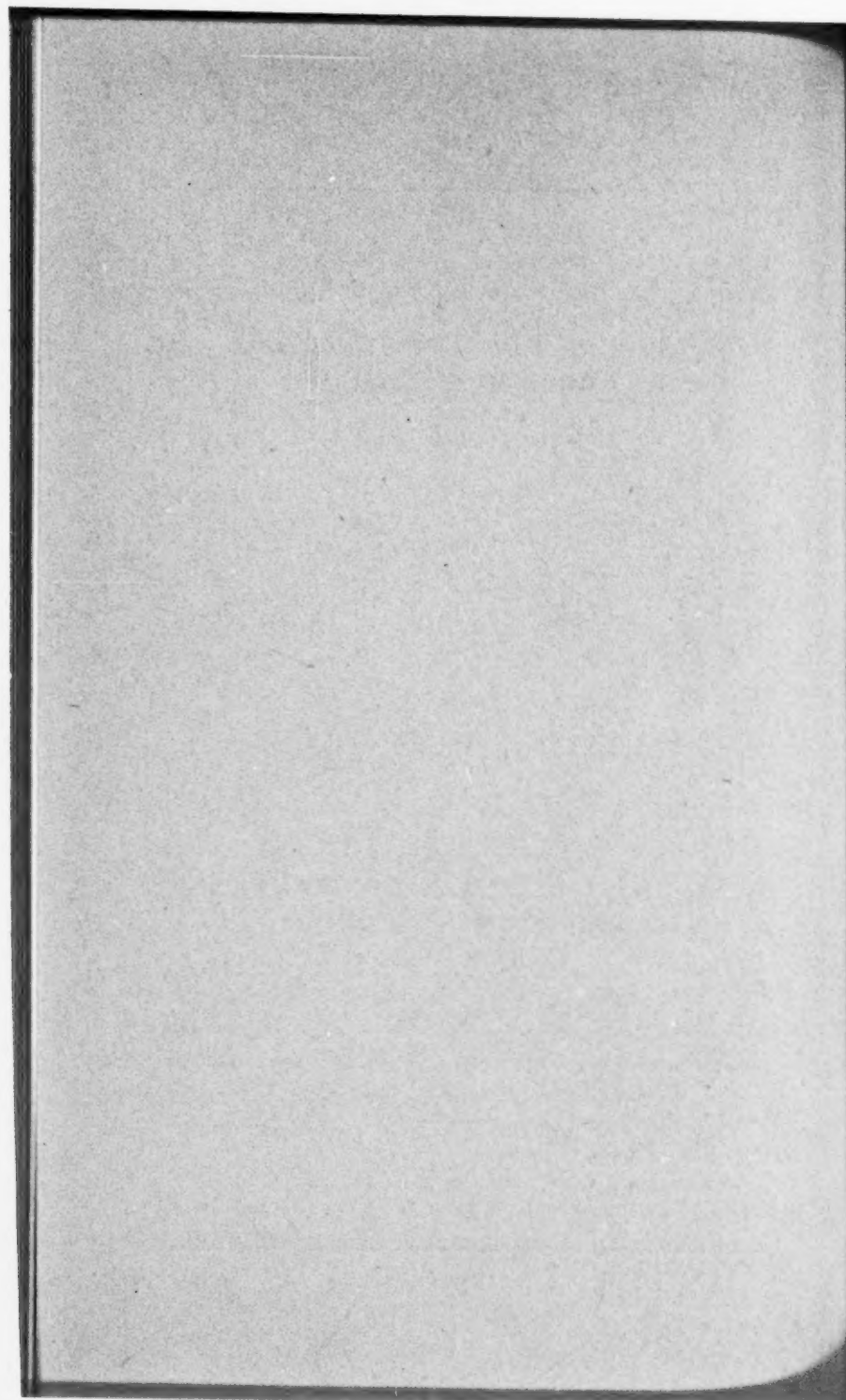
—
JOHN T. HENDRICK,
Plaintiff in Error.

VS.

STATE OF MARYLAND,
Defendant in Error.

—
**BRIEF OF THE STATE OF MARYLAND,
DEFENDANT IN ERROR.**

—
EDGAR ALLAN POE,
Attorney-General of the State of Maryland.
ENOS S. STOCKBRIDGE,
On Behalf of Defendant in Error.



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IN THE
Supreme Court of the United States.

OCTOBER TERM, A. D. 1914.

No. 77.

JOHN T. HENDRICK,
Plaintiff in Error,

VS.

STATE OF MARYLAND,
Defendant in Error.

**BRIEF OF THE STATE OF MARYLAND,
DEFENDANT IN ERROR.**

This Writ of Error involves the constitutionality of those sections of the Maryland Motor Vehicle Law which require the registration of motor vehicles operated upon the highways of the State of Maryland, and the payment of an annual license for such registration and operation. The Writ of Error is directed to the Circuit Court of Prince George's County, which is the highest Court in the State of Maryland having jurisdiction to pass upon this case, and by which the Act complained of was adjudged not to be in conflict with the Federal Constitution.

STATEMENT OF THE CASE.

This case was tried in the lower Court upon an agreed statement of facts, which will be found on pages 3 and 4 of the Record, and which it is unnecessary to set out here.

The material portions of the sections of the Maryland Motor Vehicle Law involved in this case will, for convenience, be set out here together. They are as follows:

Sec. 132. *Definitions.* " * * * The term 'state,' as used in this sub-title, except when otherwise expressly provided, and except in Section 140A, shall also include the territories and federal districts of the United States."

Sec. 133. *Registration of Motor Vehicles.* "Every owner of one or more motor vehicles, including motor cycles, before the same shall be operated in this State, and except as hereinbefore otherwise provided, shall file with the Commissioner of Motor Vehicles, on a blank furnished by the Commissioner, his application for the registration of such motor vehicles, containing (1) the name, residence and post office address of the applicant; (2) a brief description of each motor vehicle owned or controlled by him, including the name of the maker, the character of the motor power and the amount of such motor power stated in figures of horse power as advertised by the maker thereof; (3) the number of cylinders and diameter of the bore of the cylinders stated in inches, and (4) such other information as shall be required by said Commissioner. * * * The said Commissioner of Motor Vehicles, upon payment of the registration fee hereinafter provided for, shall file such application in his office and register such motor vehicle, assigning to it a distinguishing number or make, or mark, and shall thereupon issue to the owner thereof a certificate of registration which shall contain the name, place of residence and post office address of the owner, and the number or mark assigned to such motor vehicle. Such certificate shall be in convenient form and shall be at all times carried upon such motor vehicle, and shall be subject to examination upon demand

by any proper officer. Said Commissioner shall also, without expense to the applicant, issue and deliver to such owner two duplicate metal plates or markers bearing the letters 'Md.' and the number or mark assigned to such motor vehicle as aforesaid, the figures thereon to be not less than five inches high, and each stroke to be not less than one-half inch in width. Such plates or markers shall be of a distinctly different color or shade each year, to be designated and selected by the Commissioner of Motor Vehicles, and there shall be at all times a marked contrast between the color of the number plates and that of the numerals or letters thereon. In the case of motor cycles, a number plate or marker shall be furnished, the letters and figures thereon to be at least one inch high and one-eighth of an inch in width. The certificate provided for in this section and the right to use the number plate or marker aforesaid shall expire at midnight on December 31st of each and every year."

Sec. 140A. *Non-Resident Owners and Operators.*
 "Any owner or operator not a resident of this State, who shall have complied with the laws of the State in which he resides, requiring the registration of motor vehicles or licensing of operators thereof, and the display of identification or registration numbers on such vehicles and who shall cause the identification number of such State, in accordance with the laws thereof, and none other, together with the initial letter or letters of said State to be displayed on his motor vehicle, as in this sub-title provided, while used or operated upon the public highways of this State, may use such highways not exceeding two periods of seven consecutive days in each calendar year, without complying with the provisions of Sections 133 and 137 of this sub-title, if he obtains from the Commissioner of Motor Vehicles and displays on the rear of such vehicle a tag or marker which the said Commissioner of Motor Vehicles shall issue in such form and contain such distinguishing marks as he may deem best, upon the application of said owner or operator; provided, that if any non-resident be convicted of violating any provisions of Sec-

tions 140B, 140C, 140D, 140E and 140L of this sub-title, he shall thereafter be subject to and required to comply with all the provisions of said Sections 133 and 137 relating to the registration of motor vehicles and the licensing of operators thereof; and the Governor of this State is hereby authorized and empowered to confer and advise with the proper officers and legislative bodies of other States of the Union and enter into reciprocal agreements under which the registration of motor vehicles owned by the residents of this State will be recognized by such other States, and he is further authorized and empowered, from time to time, to grant to residents of other States the privilege of using the roads of this State as in this section provided in return for similar privileges granted residents of this State by such other States."

Sec. 140 O. *Penalties.* "Any person violating any provision of Sections 137, 139, 140D, 140E or 140L of this sub-title shall be fined not more than five hundred dollars (\$500.00), or imprisoned for not more than ninety days, or both, for each and every offense. And any person violating *any other provision of this sub-title* shall be fined not more than fifty dollars (\$50) for each first offense * * *."

These sections are all contained in Chapter 207 of the Laws of Maryland, passed by the Legislature of 1910.

ARGUMENT.

I.

THE ACT OF 1910 IS A VALID EXERCISE OF POLICE POWER BY THE STATE OF MARYLAND.

The principles involved in the present case are by no means novel, as legislation of this same general type has been before this Court on innumerable occasions. The subject-matter, however, is one that has developed greatly with-

in the past decade, and it is not surprising, therefore, that questions should be raised concerning the regulations of it. In discussing this case we are, therefore, concerned not with any new or unusual principle, but simply with the application of doctrines long recognized, and at this late date thoroughly crystallized.

Since the early case of *Gibbons vs. Ogden* (9 Wheat. 1, 203), this Court has recognized the right of the States to regulate and control their highways under what is termed "the police power."

As this Court, speaking through Mr. Justice Field, said in *Cardwell vs. Bridge Co.*, 113 U. S. 205, 208, referring to several cases previously cited:

"They recognize the full power of the States to regulate within their limits, matters of internal policy which embrace, among other things, the construction, repair and maintenance of roads and bridges and the establishment of ferries; that the States are more likely to appreciate the importance of these means of internal communication and to provide for their proper management, than a government at a distance * * *."

This same doctrine has been upheld or referred to in a long line of cases, the more important of which are as follows:

- Phillips vs. Mobile, 208 U. S. 472;
- Minn. Rate Cases, 230 U. S. 352, 411;
- N. Y. vs. Miln, 11 Pet. 102;
- Barbier vs. Connolly, 113 U. S. 27, 31;
- New Orleans Gas Light Co. vs. La., 115 U. S. 650, 661;
- Jones vs. Brim, 165 U. S. 180, 182;
- Gloucester Ferry Co. vs. Pa., 114 U. S. 196, 215;
- Slaughter House Cases, 16 Wall. 36, 63;
- Escanaba Trans. Co. vs. Chicago, 107 U. S. 678;
- Lake Shore vs. Ohio, 173 U. S. 285, 303;
- Robbins vs. Shelby Co., 120 U. S. 489, 493.

Since the automobile came into more or less common use, this precise question has not been before this Court. Various State courts, however, have given it their consideration, and in conformity with the well recognized doctrines of this Court have held that such regulations were a proper exercise of this power.

- Ruggles vs. State, 120 Md. 553, 561;
- Ayres vs. Chicago, 239 Ill. 237;
- Commonwealth vs. Kingsbury, 199 Mass. 542, 544;
- State vs. Mayo, 106 Me. 62;
- Brazier vs. Philadelphia, 215 Pa. St. 297;
- Bozeman vs. State, 7 Ala. ^{APP} 151;
- Unwen vs. N. J., 73 N. J. L. 529, affirmed in 75 N. J. L. 500;
- Kane vs. Titus, 81 N. J. L. 594.

In cases involving the principle here under discussion, counsel have urgently pressed upon the Court the doctrine that the subject involved is "commerce" and, therefore, under the exclusive control of Congress, and that when Congress has taken no action with regard to it, it has willed that the subject should be free from interference of any kind. Arguments of this sort have uniformly been rejected by the courts upon the principle that such subjects are not national in their character, but local, and therefore, although regulation by the States may incidentally affect interstate commerce, nevertheless, such regulation is valid until Congress does act.

- Minn. Rate Cases, 230 U. S. 352, 411-12;
- Monongahela Nav. Co. vs. U. S., 148 U. S. 312, 333;
- Covington Bridge Co. vs. Ky., 154 U. S. 204, 209;
- Robbins vs. Shelby Co., 120 U. S. 489, 493;
- Huse vs. Glover, 119 U. S. 543.

That legislation of the character here in question which has for its purpose the regulation of highways and the protection of life and property against those using the highways, is a matter of local concern and not national in its character, is made clear beyond all question of doubt by the very lucid distinction announced by Mr. Justice Field, speaking for this Court in *Mobile Co. vs. Kimball*, 102 U. S. 691, 697, where he says:

"Perhaps some of the divergence of views upon this question among former Judges may have arisen from not always bearing in mind the distinction between *Commerce*, as strictly defined, and *its local aids or instruments, or measures taken for its improvement*. Commerce with foreign countries and among the States, strictly considered, consists in intercourse and traffic, including in these terms navigation and the transportation and transit of persons and property, as well as the purchase, sale and exchange of commodities. For the regulation of commerce as thus defined, there can be only one system of rules applicable alike to the whole country; and the authority which can act for the whole country can alone adopt such a system. Action upon it by separate States is not, therefore, permissible. *Language affirming the exclusiveness of the grant of power over commerce as thus defined, may not be inaccurate, when it would be so if applied to legislation upon subjects which are merely auxiliary to commerce.*"

(The italics in the above quotation are ours.)

This distinction as it applies to highways is also recognized in the *Minn. Rate Cases*, *supra*.

The fourth assignment of error raises the question as to whether the amount of the licenses prescribed by the Act in question bears any relation to the necessary expense of identification or control of motor vehicles operated in the State of Maryland. The Record sheds no light on this question of fact, and there is no way in which this Court can

determine that inquiry. It is a matter, therefore, on which this Court cannot and will not pass.

Red "C" Oil Co. vs. N. C., 222 U. S. 380;
 Atl. and Pac. Tel. Co. vs. Phila., 190 U. S. 165;
 Western Union vs. New Hope, 187 U. S. 419;
 Patapasco Guano Co. vs. N. C., 171 U. S. 354;
 Packet Co. vs. St. Louis, 100 U. S. 423, 429;
 Foote vs. Md., 232 U. S. 494, 504.

In the Foote case, *supra*, at page 505, this Court recognized that there are instances where the Act in question may show upon its face that the charges made are unreasonable, in that they are expressly shown to be more than sufficient for the direct purposes for which imposed. The Act we are dealing with in this case is not the type of Act involved in the Foote case, although it is provided in Section 140R:

"All monies received by the Commissioner of Motor Vehicles pursuant to the provision of this sub-title, except such as shall be necessary for his salary and the expenses of his office as hereinbefore provided, shall be accounted for and remitted by said Commissioner to the State Treasurer, who shall create a special fund thereof, and on the first day of April in each year, one-fifth thereof to be paid to the Mayor and City Council of Baltimore for use on its roads and streets, and the balance to be used for the oiling, maintenance and repair of the modern roads now being built by the State and Counties, and for no other purpose. Disbursement of the remaining four-fifths from this fund shall be made by the Treasurer to the counties on draft for expenditures which have actually been made in repairs on State Aid Roads, certified to by the Maryland Geological and Economic Survey Commission, and to the State Roads Commission for expenditures which have actually been made in repairs on State Roads construction by that body, on draft from such body itself * * *."

Although the above quotation from the Act provides for the payment of the surplus, if any, over and above expenses

of the Motor Vehicle Commission, to the State Treasurer for certain purposes therein set out, there is nothing in this case from which the Court would be justified in *assuming as a fact* that there is any such surplus. The statute referred to in the Foote case differs from the present statute in that the former *assumed* that the tax in question would more than suffice to pay for the cost of inspection, and directed that the balance, after paying cost of inspection, should be devoted to the purpose of reshellings oyster beds by providing that *one-half of all receipts* should be used for inspection, and the *other one-half* for reshellings purposes.

Furthermore, the mere fact that the funds received by the Commissioner of Motor Vehicles are to be turned over to the State Treasurer for the benefit of a road fund, does not, as alleged in the fifth specification of error, render this law invalid as a "tax under the guise of the police power."

Morgan vs. La., 118 U. S. 455;

Huse vs. Glover, 119 U. S. 543, 549;

Cleary vs. Johnston, 79 N. J. L. 49;

Hardin Storage Co. vs. Chicago, 235 Ill. 58, 68.

In the sixth specification of error this law is alleged to be invalid, in that the fees charged are not based on the value of the use of the highways. The contention sought to be raised here is not entirely clear to us. Certainly there is nothing in the present record to support the allegations as a question of fact, and as we have already seen, this Court can, therefore, not determine that question. If, however, the theory of the plaintiff in error is that the amount of the fee charged should be determined as to each individual user by the number of miles he travels on our highways, instead of by an annual charge of a lump sum, he is undertaking to announce a most surprising and impracticable doctrine. Assuming the right of the State to make any charge whatever,

there can be no question of the principle that the manner of making such charge lies entirely within its discretion, provided it does not act unreasonably.

Sands vs. Manistee, etc., Co., 123 U. S. 288, 295;

Kane vs. Titus, 81 N. J. L. 594;

Bogart vs. Ohio, 2 I. C. R. 297;

Home Ins. Co. vs. N. Y., 134 U. S. 594, 600.

This Court is always slow to interfere with the discretion of State Legislatures over those matters within their power, and will only do so when their action is clearly unreasonable. Whether the State of Maryland sees fit to make a mileage charge or a lump charge with unlimited user, is a matter dependent upon local experience, to a great extent dependent upon the practicability of ascertaining the amount of user for each of several thousand machines. To state the proposition of the Plaintiff in Error shows its extreme impracticability, and is a complete answer to it. In such cases, "This Court ought to be very slow to declare that the State Legislature was wrong in its facts." In the exercise of its discretion by the Legislature, it is clear from an examination of the Record that "This Court has no such knowledge of local conditions as to be able to say that it was manifestly wrong."

Patsone vs. Pa., 232 U. S. 138, 144.

Neither can the Plaintiff in Error successfully attack the present law because it operates only on motor vehicles. Such legislation creates a reasonable classification of vehicles using the roads, and is not an unlawful discrimination against a particular class.

Jones vs. Brim, 165 U. S. 180, 182.

State vs. Mayo, 106 Me. 62;

Christy vs. Elliott, 216 Ill. 31;

State vs. Swagerty, 203 Mo. 517.

And this Court will take judicial notice of the fact that automobiles are capable of attaining very high rates of speed, that their weight is very considerable, and that as a result they are usually destructive of roads.

Kane vs. Titus, 81 N. J. L. 594.

Nor is the classification in Section 136 a discrimination. By this classification the amount of fee varies according to the horse power of the vehicles. Such a classification is a convenient and reasonable means of basing the charge upon the weight and power, and consequently, speed of the machine. It is too plain for argument, that a vehicle which weighs one thousand pounds and can only attain a speed of twenty miles an hour is not so destructive of roads, or such a menace to life and limb, as a modern juggernaut weighing a ton and able to attain a speed of sixty miles an hour.

It is sufficient to say in closing this portion of the argument, that the Fourteenth Amendment was never intended to abridge the police power of the State. Its only purpose was to prevent the State from acting arbitrarily, and in a manner having no reasonable relation to the end in view. If the Act in question is properly within the police power of the State, this Court will not inquire further. The redress of the people who claim to be aggrieved is with the legislature and not through the courts. This Court has often announced that it is not a haven to be sought for relief from ill-advised or unwise legislation.

Lochner vs. New York, 198 U. S. 45, 53;

Barbier vs. Connolly, 113 U. S. 27, 31;

Minn. Rwy. vs. Beckwith, 129 U. S. 26, 33;

L'Hote vs. New Orleans, 177 U. S. 587, 596;

House vs. Mays, 219 U. S. 270, 282;

Broadnax vs. Mo., 219 U. S. 285, 292-3;

Transportation Co. vs. Parkersburg, 107 U. S. 691, 700.

II.

THE COMMERCE CLAUSE.

The Maryland Motor Vehicle Law being a valid exercise by the State of Maryland of its police power, it still remains to consider the contention that it is a regulation of or imposes a burden on interstate commerce. If it does, then it must give way. But if it is not such a regulation or does not impose such a burden, then it is valid, even though it may indirectly affect interstate commerce somewhat.

(A)

PLAINTIFF IN ERROR WAS NOT ENGAGED IN INTERSTATE COMMERCE.

At the outset we are met with the inquiry, Was the plaintiff in error engaged in interstate commerce at the time of his arrest? This is important, because if he was not, then obviously he cannot be heard to complain that the Act involved is in conflict with the commerce clause of the Constitution.

Hatch vs. Reardon, 204 U. S. 152, 161;

Williams vs. Walsh, 222 U. S. 415, 422.

The facts upon which this must be determined are found in paragraph 4 of the agreed statement of fact (Record, page 4), which is as follows:

"That on the 27th day of July, 1910, said John T. Hendrick left his office in the City of Washington in the automobile aforesaid, and conducted and operated the same from the City of Washington, in the District of Columbia, into Prince George's County, in the State

of Maryland; and while temporarily operating and conducting the same as aforesaid, was arrested on the Baltimore and Washington turnpike, within the limits of the town of Hyattsville, in said county, in said State, on the charge of operating his said automobile on the highways of the State of Maryland without having procured the certificate of registration required by Section 133 of the Motor Vehicle Law of said State."

Do these facts constitute interstate commerce?

The question as to what is and what is not commerce within the constitutional provision has been before this Court in many and varied forms, but we believe the present case presents some novel considerations. There are several well established principles, however, and a reference to them will indicate quite clearly, we submit, that Hendrick was not engaged in "commerce."

As said in the famous case of *Gibbons vs. Ogden*, 9 Wheat. 1, 189:

"Commerce, undoubtedly, is traffic, but it is something more; it is intercourse. *It describes the commercial intercourse* between nations, and parts of nations, in all its branches, and is regulated by prescribing rules for carrying on *that intercourse*." (Italics are ours.)

Again:

"Commerce—among the States, strictly considered, consists in intercourse and traffic, including in these terms navigation and the transportation and transit of persons and property, as well as the purchase, sale and exchange of commodities."

Mobile Co. vs. Kimball, 102 U. S. 691, 702.

Again:

"The thousands of people who daily pass and repass over this bridge may be as truly said to be engaged in commerce as if they were shipping cargoes of merchandise from New York to Liverpool."

Covington Bridge Co. vs. Ky., ~~102~~ U. S. 204,
218. 154

Again:

"Commerce among the States, we have said, consists of intercourse traffic between their citizens, and includes the transportation of persons and property. There may be, therefore, a movement of persons as well as of property; that is, a person may move or be moved in interstate commerce."

Hoke vs. U. S., 227 U. S. 308, 320.

Again:

"It cannot be too strongly insisted upon that the right of *continuous transportation* from one end of the country to the other is essential in modern times to that freedom of commerce from the restraints which the State might choose to impose upon it, that the commerce clause was intended to secure."

Wabash, etc., Rwy. vs. Ill., 118 U. S. 556, 572-3.

From these cases, and many others like them, may be deduced the following principles:

1. "Commerce" describes *commercial* intercourse.
2. "Commerce" includes the transit of persons *when related to commercial intercourse*. As said in the Covington Bridge case, *supra*:

"As persons living in one State *and doing business in another* would necessarily have to cross the bridge at least twice a day, the rates of toll might become a serious question with them."

3. Persons may move or be moved in interstate commerce, as *articles of commerce*.

Hoke case, *supra*.

4. In order to say that a person or thing is moving in interstate commerce, the movement must be continuous.

Susquehanna Coal Co. vs. South Amboy, 228 U. S. 665.

If these principles are sound, then Hendrick was not engaged in interstate commerce. True, he crossed the State line, so that *technically* the word "interstate" is satisfied, but there is no pretense of a commercial aspect to his journey. Nor is the question to be governed by the Covington case. There the Court was dealing with the use of a highway necessarily used in commercial pursuits and not lying wholly within the borders of the State of Kentucky.

Neither can the plaintiff in error by any possible stretch of the imagination be regarded as an article of commerce, or analogous thereto, as in the white slave cases.

Nor was Hendrick in the course of a continuous journey. He was not on a common carrier. He had no definite purpose or objective point. He was pleasure riding, going wherever his fancy led him, on as long a journey as he wished, and stopping as frequently and at such points as momentary inclination prompted him. And such stops would be "something more, therefore, than an *incidental interruption of the continuity of its journey through the State.*"

Susquehanna Coal Co. vs. South Amboy, *supra*.

The right of the citizens to go to and from the States of the Union is not based upon the theory that by so doing they are engaged in interstate commerce. On the contrary, it is expressly put upon another ground in *Crandall vs. Nevada*, 6 Wall. 35, 44:

"But if the government has these rights on her own account, the citizen also has correlative rights. He has the right to come to the seat of government to assert any claim he may have upon the government, or to transact any business he may have with it. To seek its protection, to share its offices, to engage in administering its functions. He has a right to free access to its seaports, through which all the operations of foreign trade and commerce are conducted, to the sub-treasuries, the land offices, the revenue offices and the courts of justice in the several States, and this right is in its nature inde-

pendent of the will of any State over whose soil he must pass in the exercise of it."

We respectfully urge, therefore, that the plaintiff in error was not, at the time of his arrest for a violation of the Act in question, engaged in interstate commerce, and hence cannot be heard to raise the inquiry of its interference with the Commerce Clause.

(B)

THE ACT IS NOT IN CONFLICT WITH THE COMMERCE CLAUSE.

Since the Maryland Motor Vehicle Law is clearly a proper exercise by the State of Maryland of its police power, it still remains to be seen whether or not it conflicts with the commerce clause of the Constitution. If it does, then the Act is, of course, invalid; if it does not create a burden on interstate commerce, some other ground must be alleged for its invalidity.

In discussing this phase of the present case, it is conceded by the defendant in error that commerce between a State and the District of Columbia is commerce "among the several States." This, it would seem, can no longer be open to question in this Court.

Stoutenburgh vs. Hennick, 129 U. S. 141;
Hanley vs. Kansas, etc., Rwy., 187 U. S. 617.

The principles involved in this phase of the case have so often and clearly been defined by this Court and the boundary marks between interference with interstate commerce and non-interference so clearly pointed out in a great number of decisions, that we are only concerned with the particular class to which this case belongs. There can be no question of the right of interstate commerce to be free from control

by the States, nor are the States permitted to lay any burden upon it, no matter how specious the pretext may be.

From very early times, however, there has been a class of circumstances under which the States or their agents, municipal or private, have been permitted to make and collect a charge for facilities rendered, and such charge has uniformly been held not to be a tax or burden on or interference with interstate commerce in any sense, although it may incidentally affect interstate commerce. The examples of this class of cases are very numerous, and the analogy between them and the present case is, we respectfully urge, conclusive of the propriety of the present law. We refer, of course, to those cases in which the State has furnished additional or better facilities for commerce or traffic, and has, therefore, aided and not burdened interstate commerce. In return for the additional facilities and improved conveniences thus provided, the States are permitted to charge and collect reasonable compensation. Some examples of such cases are herewith given and, in our opinion, it is impossible to distinguish the principle involved there from that involved in the case before the Court. For instance:

Toll charges for the use of improved navigable streams—

- Kellog vs. The Union Co., 12 Conn. 7;
- Huse vs. Glover, 119 U. S. 543, 548;
- Gloucester Ferry vs. Pa., 114 U. S. 196, 214;
- Sands vs. Manistee River, 123 U. S. 288;
- Monongahela Nav. Co. vs. U. S., 148 U. S. 312, 333;
- Thames Bank vs. Lovell, 18 Conn. 500.

So also:

Bridges over navigable streams—

- Escanaba Co. vs. Chicago, 107 U. S. 678, 683;
- The Binghamton Bridge, 3 Wall. 51;
- Covington Bridge Co. vs. Ky., 154 U. S. 204, 221-2.

For the use of wharves or docks—

- Cannon vs. New Orleans, 20 Wall. 577;
 Packet Co. vs. Keokuk, 95 U. S. 80;
 Packet Co. vs. St. Louis, 100 U. S. 423;
 Vicksburg vs. Tobin, 100 U. S. 430;
 Packet Co. vs. Catlettsburg, 105 U. S. 559;
 Transportation Co. vs. Parkersburg, 107 U. S.
 691;
 Packet Co. vs. Aiken, 121 U. S. 444;
 Huse vs. Glover, 119 U. S. 543.

And:

For the use of roads or streets—

- Tomlinson vs. Indianapolis, 144 Ind. 142, 36
 L. R. A. 413;
 Monongahela Nav. Co. vs. U. S., 148 U. S. 312,
 333-4;
 Cleary vs. Johnston, 79 N. J. L. 49;
 Kane vs. Titus, 81 N. J. L. 594.

The State of Maryland has expended and is expending large sums of money in the improvement of its highways, and it is not necessary to go outside of the Record for the establishment of this fact. It appears from the law itself, which is questioned, and we refer to that section of the law heretofore quoted which provides that the funds, if any, turned over by the Motor Vehicle Commissioner to the State Treasurer, shall constitute a special fund to be paid out by him for the oiling, maintenance and repair of the *modern roads now being built* by the State and counties, and for no other purpose. Such modern and scientifically constructed roads add immeasurably to the facility and pleasure afforded those who desire to traverse this country by means of motor vehicles. Without such roads the motorist faces untold hazards on any journey of length. The construction of such roads is, therefore, necessarily an aid to commerce, and in

return for providing and keeping in repair such a material aid, the State is unquestionably entitled to compensation. The analogy between the cases just cited and the present case is most convincing and conclusive and, we respectfully urge, there can be no answer to the language used by Mr. Justice Brewer, speaking for this Court in the *Monongahela* case, *supra*:

“and to meet the cost of such improvements, the States may levy a general tax *or lay a toll upon all who use the rivers and harbors as improved.*”

The improvements are, in that respect, like wharves and docks, constructed to facilitate commerce in loading and unloading vessels. Regulations of tolls or charges in such cases are mere matters of administration under the entire control of the State. A number of the cases above cited were collected and approved by this Court in the recent case of

Atl. and Pac. Tel. Co. vs. Pa., 190 U. S. 160,
163.

The Record fails to disclose whether or not the license fees in question result in any benefit to the State of Maryland. It fails to show that there is any excess over and above the expense of registration and policing that can be appropriated for the purpose of repairing and maintaining the highways of the State. But even if it were shown in this case that the amount of the fees charged as compensation for the use of the improved roads of this State does result in a benefit to the State, such fact does not make the fees provided for either unreasonable or a burden on interstate commerce. This precise question has frequently been presented to this Court and its decision has upheld the fee; as has been said:

“But we are of opinion that this section of the ordinance was clearly an exercise of the police power of the State, and as such authorized by the Act of Congress. *The fact that the city derives more or less reve-*

nue from the ordinance in question does not tend to prove that this section was not adopted in exercise of the police power, even though it might also be an exercise of the power to tax. The police power is a very extensive one, *and is frequently exercised where it also results in raising a revenue.* The police powers of a State form a portion of that immense mass of legislation not surrendered to the general government, all of which may be most advantageously exercised by the States themselves. Inspection laws, quarantine laws, health laws of every description, as well as laws for regulating the internal commerce of a State, and *those which respect turnpike roads, ferries, etc., are component parts of this mass."*

Phillips vs. Mobile, 208 U. S. 472, 478-9.

Other cases to the same effect are:

Transportation Co. vs. Parkersburg, 107 U. S. 691, 699;

Packet Co. vs. Aiken, 121 U. S. 444, 449;

Huse vs. Glover, 119 U. S. 543, 549.

And the question of the reasonableness of such charges is one solely for the States, unless Congress itself takes action, and is a question with which this Court has no concern.

Cases cited, and

Gilman vs. Phila., 3 Wall. 713, 731.

In the second specification of error, it is alleged that the law complained of abridges the right of free egress and ingress so far as the State of Maryland is concerned.

There can be no dispute but that the citizens of the States and United States have the right to go into and leave any State of this Union without hindrance. This right has been expressly recognized by the courts.

Crandall vs. Nev., 6 Wall. 35;

Ward vs. Md., 12 Wall. 418, 430;

Slaughter House Cases, 16 Wall. 36, 75.

But the plaintiff in error fails to distinguish between the hindrance or interference by a State with such right, and the undoubted right of a State to protect its own citizens and property, although the exercise of this right by the State may *incidentally* or *remotely* affect the right. A very common illustration of this is the unquestioned right of a State under its quarantine law to prohibit the entrance into its territory of persons or property from localities suffering from an epidemic of infectious diseases without thorough fumigation.

Railroad Co. vs. Husen, 95 U. S. 465, 473;
Minn. Rate Cases, 230 U. S. 352, 406.

The illustration just cited may be criticised as an extreme case, yet it is a common one, and the difference between the illustration and the case at bar is merely quantitative and not qualitative. It is further to be noted that there is no restriction upon the right of egress and ingress of an individual, but merely a provision that if the individual sees fit in passing through our State to do so by means of a highly destructive instrumentality, then he must contribute to the expense imposed upon the State by reason of the use of such instrumentality. Moreover, the Crandall case and other cases of that type, differ from the case at bar, in that in the former the courts were concerned with public conveyances, while in the latter they were concerned with a strictly private convenience. That a State is justified in requiring those, who *elect* to use on its highways a mode of travel that is abnormally destructive to that road, to compensate it for such use, is too clear for further argument.

Kane vs. Titus, 81 N. J. L. 594.

III.

THE ACT CONSTITUTES NO UNLAWFUL DISCRIMINATION
AGAINST RESIDENTS OF THE DISTRICT OF COLUMBIA.

The law in question is attacked by the plaintiff in error in his third specification because it grants two periods of seven days each to non-residents of the States of the Union, during which compliance with the law is not required, but expressly denies this right or privilege to residents of the District of Columbia.

Sections 132 and 140A, set out on page

We have seen that this Act is a proper exercise by the State of Maryland of its police power. If that is so, then the alleged discrimination against residents of the District of Columbia cannot be complained of under the Fourteenth Amendment. The Act can only be invalid for the reasons assigned in this specification of error under the "Privileges and Immunities" clause, or the "Equal Protection of the Laws" clause. These clauses, properly construed, go no further than to prohibit the States from imposing *greater* restrictions or burdens on citizens of other States or the United States than it does on its own citizens.

Ward vs. Md., 12 Wall. 418, 430 ;

Slaughter House Cases, 16 Wall. 36, 77 ;

Blake vs. McClung, 172 U. S. 239, 249, 256.

It is, of course, apparent that the Act under discussion imposes no greater restrictions or burdens on the residents of the District of Columbia than it does on the citizens of Maryland. They are required to take out the *same licenses*, under the *same conditions*, for the *same period*, and for the *same fee*. In no particular is there any distinction or difference made between the residents of the District of Columbia and the citizens of Maryland.

It is equally apparent that the residents of the District of Columbia are classified differently from the residents of other States except Maryland. But since there is no difference in the requirements of the residents of the District and the citizens of Maryland, it only remains to consider whether or not this classification is a reasonable one, and rests upon a well founded ground of distinction between them. Is there any such ground for distinction and classification?

Let us direct attention for the moment to the results aimed at by this law, bearing in mind that we are dealing with regulations of high-powered machines capable of causing great injury and destruction to life and property, capable of attaining high rates of speed, and a consequent difficulty of detection unless plainly and at all times distinctively marked. It is, of course, apparent that this law seeks to protect person and property by requiring the automobile and owner of this destructive agency to be registered, so that in case of damage done or injury caused, he may readily be ascertained and located. All of these purposes are clearly within the police power of the State, and are, in fact, among the primary objects of that power.

What bearing does this, then, have on residents of the District? The Court will take judicial notice of the geographical location of the District to the borders of Maryland; that the District is a large and populous city; that it is limited in area; and that, therefore, users of motor vehicles are necessarily forced to go frequently and constantly into the adjoining States. The Court will also take judicial notice of the fact that there is no large city in any other State so situated with respect to the borders of Maryland. This we respectfully submit, is conclusive of the justness of the classification made by the act, and when such classification rests upon

reasonable and well founded grounds, as the present one does, the Courts will uphold it.

Heath, etc., vs. Worst, 207 U. S. 338, 355-6;

Patson vs. Pa., 232 U. S. 138, 144;

Osan Lumber Co. vs. Bank, 207 U. S. 251;

Field vs. Barber Asphalt Co., 194 U. S. 618,
621.

In a case of this character where the Court is called upon to decide whether or not a statute is arbitrary and creates a discrimination, it will not content itself with merely looking at the Act; but it will go further than this, as was said by Mr. Justice McKenna, speaking for the Court in a recent case:

“Not only the final purpose of the law must be considered, but the means of its administration—*the ways it may be defeated*. Legislation, to be practical and efficient, must regard this specific purpose as well as the ultimate purpose.”

St. John vs. N. Y., 201 U. S. 633, 637.

See also—

Morgan vs. La., 118 U. S. 455, 462;

N. Y. vs. Miln, 11 Pet. 129.

When the Court looks at the purpose for which this statute was enacted, the means of its administration, and the ways it may be defeated, we respectfully submit that the conclusion, that it creates a *reasonable classification* and not a *discrimination*, is inevitable.

EDGAR ALLAN POE,

Attorney-General of the State of Maryland.

ENOS S. STOCKBRIDGE,

On Behalf of Defendant in Error.

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HENDRICK v. STATE OF MARYLAND.

ERROR TO THE CIRCUIT COURT OF PRINCE GEORGE'S COUNTY,
STATE OF MARYLAND.

No. 77. Argued November 11, 12, 1914.—Decided January 5, 1915.

Only those whose rights are directly affected can properly question the constitutionality of a state statute and invoke the jurisdiction of this court in respect thereto.

Where a state statute provides as a prerequisite to the use of the highways of a State without cost by residents of other States compliance with the highway laws of their respective States, one who does not show such compliance cannot set up a claim for discrimination in this particular.

Quære, and not now decided, whether the Motor Vehicle Law of Maryland so discriminates against residents of the District of Columbia as to be an unconstitutional denial of equal protection of the laws in that respect. This court will assume, in the absence of a definite and authoritative ruling of the courts of a State to the contrary, that

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Counsel for Plaintiff in Error.

when a statute shall be construed by the highest court, discrimination against the residents of a particular State or Territory will be denied.

The movement of motor vehicles over highways being attended by constant and serious dangers to the public and also being abnormally destructive to the highways is a proper subject of police regulation by the State.

In the absence of national legislation covering the subject, a State may prescribe uniform regulations necessary for safety and order in respect to operation of motor vehicles on its highways including those moving in interstate commerce.

A reasonable graduated license fee on motor vehicles when imposed on those engaged in interstate commerce does not constitute a direct and material burden on such commerce and render the act imposing such fee void under the commerce clause of the Federal Constitution.

A State may require registration of motor vehicles; and a reasonable license fee is not unconstitutional as denial of equal protection of the laws because graduated according to the horse power of the engine. Such a classification is reasonable.

The reasonableness of the State's action is always subject to inquiry in so far as it affects interstate commerce, and in that regard it is likewise subordinate to the will of Congress.

A State which, at its own expense, furnishes special facilities for the use of those engaged in interstate and intrastate commerce may exact compensation therefor; and if the charges are reasonable and uniform they constitute no burden on interstate commerce. The action of the State in such respect must be treated as correct unless the contrary is made to appear.

A state motor vehicle law imposing reasonable license fees on motors, including those of non-residents, does not interfere with rights of citizens of the United States to pass through the State. *Crandall v. Nevada*, 6 Wall. 35, distinguished.

THE facts, which involve the construction and constitutionality of certain provisions of the Motor Vehicle Law of Maryland and their application to citizens of the District of Columbia, are stated in the opinion.

Mr. Jackson H. Ralston and Mr. Osborne I. Yellott, with whom Mr. Clement L. Boure and Mr. William E. Richardson were on the brief, for plaintiff in error: